

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE

CASE NO.  
UD987/2011  
*(claimant)*

Against

EMPLOYER *(respondent)*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr R. Maguire, B.L.

Members: Mr. L. Tobin  
Mr P. Trehy

heard this claim at Dublin on 9th October 2012

Representation:

---

Claimant(s) :

Respondent(s) :

The determination of the Tribunal was as follows:

The claimant commenced his employment with the respondent as a Warehouse Operative on 23<sup>rd</sup> March 2007. The current HR Manager gave evidence on behalf of the respondent based on file records. She was not an employee with the respondent at the time of the incident.

According to company documents, the claimant attended work on 19<sup>th</sup> December 2010 and refused to carry out an instruction by a Supervisor. The Supervisor informed the night shift Manager, who called both parties into the office. The HR Manager stated that the file records indicated that the claimant stated that as far as he was concerned, he was given an instruction by a work colleague and he was not aware that this employee was a Supervisor. At the time of the meeting in the office, the Manager referred to a meeting which took place two months prior, when it was indicated that the employee in question had been appointed as a Supervisor.

The HR Manager stated that, according to the notes on file, the claimant demanded a letter at a meeting on 21<sup>st</sup> December, 2012 confirming that the employee had in fact been appointed as a Supervisor. According to the notes, the claimant refused to apologise and was disrespectful. The dismissal was not appealed by the claimant. The night shift Manager was not available to attend the hearing to give evidence and the HR Manager at the time, no longer works with the company. The current HR Manager stated that the then HR Manger had personally informed

the claimant of the Supervisor role in question.

Giving evidence, the claimant stated he was approached at 6am on 19<sup>th</sup> December 2010 by employee S, who told him to do the checking. The claimant said ok but indicated to employee S that he had to now do the task of employee S as he had been talking all night. Employee S told the claimant that it was none of his business and then went to speak to the night shift Manager. The night shift Manager told the claimant that employee S was the Supervisor and instructed him to go home. The claimant indicated that he was not aware that employee S was a Supervisor. He stated that he did not refuse to do the task.

The claimant denied asking for a letter stating that employee S was a Supervisor. He received his dismissal letter about one week after the incident and has no idea why he was dismissed.

In cross-examination, the claimant stated that employee S probably called the night shift Manager because of what the claimant had said about him talking all night. He did not appeal the dismissal decision as he did not know how to initiate an appeal.

In reply to the Tribunal, the claimant stated that he was not aware of an investigation into the matter. The claimant gave evidence pertaining to loss and his efforts to mitigate the loss.

Giving evidence, CB stated that he was working on 19<sup>th</sup> December 2010. He was not present when employee S instructed the claimant to do the checking. He was present when the claimant was with the night shift Manager and employee S as he was asked to translate. He said that the claimant accepted that employee S was a Supervisor and then went home as per instruction from the night shift Manager.

AD stated that he was present at the incident on 19<sup>th</sup> December 2010. He was not aware that employee S was a Supervisor. He said that the claimant said he would carry out the instruction given to him but pointed out to employee S that because he was talking all night meant that the claimant had to do the work of employee S.

## **Determination**

The Tribunal finds that the position put forward by the Respondent company is completely at odds with that put forward by the claimant. However, even if the Tribunal accepted in its entirety the case presented by the Respondent, it is clear that no fair procedures were followed in respect of the incident. The employee was summarily dismissed for allegedly being disrespectful to a superior, without being given any warning that he might lose his job, nor given any opportunity with advance notice to present his case.

In all the circumstances, the Tribunal awards the Claimant €20,000 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)