

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NOS.

EMPLOYEE – *claimant*  
RP1370/2011

UD1015/2011

MN1140/2011  
WT418/2011

against

EMPLOYER – *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007  
REDUNDANCY PAYMENTS ACTS 1967 TO 2007  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS 1973 TO 2005  
ORGANISATION OF WORKING TIME ACT 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr L. Ó Catháin  
Members: Mr D. Hegarty  
Ms H. Kelleher

heard this claim at Cork on 25th October 2012

Representation:

Claimant: Mr Stephen O’Halloran BL instructed by Mr Brian O’Connor  
of O’Keeffe O’Shea O’Connor Solicitors, 58 High Street, Killarney,  
Co. Kerry

Respondent: Mr Cathal Lombard of Eugene Carey & Co Solicitors,  
Courthouse Chambers, Mallow, Co. Cork

The decision of the Tribunal was as follows:-

The claims under the Redundancy Payments Acts 1967 to 2007, the Minimum Notice and Terms of Employment Acts 1973 to 2005, and the Organisation of Working Time Act 1997 were withdrawn.

**Respondent’s Case**

The assistant manager gave evidence. He worked in the teak department. About 100 people worked for the respondent. The assistant manager had worked with the claimant for about 10 years. The claimant made windows and doors. He was a skilled worker. The claimant had had a few issues with fellow workers. The claimant had received a copy of the Employee Handbook in Polish.

On 8<sup>th</sup> March 2011 the assistant manager saw the claimant moving a pallet containing chamfered lengths of timber, lengths of aluminium and part of a door out of the joinery. These items had nothing to do with making windows and doors. The paint shop manager had nothing to do with these items.

The assistant manager contacted the HR manager and called the claimant to a meeting in the office at 2.30pm. The claimant was asked did he make the stuff. He said he did. The aluminium was for a gate, the wood was for a swing and the door was for a cupboard. The value of the items was one thousand euro. The claimant had no permission to make these items. He understood that his job was at risk. The made these items without an order document from a customer.

The disciplinary process resulted in a decision to dismiss the claimant. The Gardaí were not contacted. The assistant manager was disappointed because he did not think the claimant would do this.

The HR manager gave evidence. The claimant had a contract of employment and was given copies of the Employee Handbook in English and in Polish. The claimant started as a general operative and was later promoted to line leader. The claimant had been involved in two altercations with colleagues and had received a warning for attendance.

Just before lunch on 8<sup>th</sup> March 2011 the assistant manager informed her that he felt that the claimant was intending to take items off site without authorisation. They looked at CCTV pictures and saw the claimant taking a pallet into the joinery and coming out into the yard with the items. The CCTV cameras were visible to staff.

The claimant was called to a preliminary meeting and shown the CCTV. The claimant said the items were for his own use. He was making a swing, a gate and a bespoke door. The HR manager suspended the claimant on full pay pending an investigation. The timber was from his stock. The door supervisor was absent that day and the claimant asked a general operative to make the door. The items were for his-own use.

A second meeting was held with the claimant on the Friday. He asked for a translator even though he had never needed one before. A translator was provided. The claimant had not understood. The items were not for him. He had just been moving them. However the claimant spoke English every day at work and on occasion he translated for his colleagues.

A third meeting was held on the Friday. The claimant was not given written notice of the accusation. The HR manager's view was that the claimant was taking the items for his own use, i.e. theft. The claimant was not given the opportunity to make representations on his own behalf. He was not given the opportunity to bring a representative to the meetings. His behaviour was gross misconduct. There was no option but to dismiss him. His versions of the incident were inconsistent. First he said the items were for his own use then he said that he was

just moving them.

The HR manager investigated and disciplined. She told the claimant at the dismissal meeting that he could appeal but did not recall telling him to whom he could appeal.

### **Claimant's Case**

The claimant gave evidence. He started working for the respondent in August 2001. At first he worked making windows. Then he made frames. He was made a line leader and later he was promoted to junior foreman.

On 8<sup>th</sup> March 2011, the day of the incident, he went to work as usual making frames. After morning break he drove the fork lift delivering pallets. He saw the items at the side but did not know what they were. He put the items on a service pallet to take them to the service area. The items did not have documents. The claimant intended reporting the items to the service manager but the service manager was not there. The claimant then got on with his work.

The assistant manager asked him what the items were. The claimant replied that he did not know. The claimant went to the office. He asked for an interpreter but did not get one. He understood some things. He was asked, what is it and where did it come from. The claimant had no way of finding out. He was suspended. Later he came back with his girlfriend's sister who would translate for him, so he could explain what had happened to the assistant manager. She was not allowed in.

The claimant did not know what was happening. He had worked there for 10 years and he never stole anything. He received a phone call telling him to come to the Friday meeting. He was not told what the meeting would be about. He brought his girlfriend but they did not let her in. At the meeting he explained that he saw the items lying there and put them on a service pallet. He could not steal the items because he travelled to and from work on the bus and the items would not fit on the bus. He was not given a written version of what the respondent thought happened. When the meeting ended he was told to go home. On the Monday the claimant was told there was no more work for him.

The claimant established loss.

### **Determination**

The Tribunal carefully considered the evidence adduced and the submissions made in this case. The respondent was faced with a situation where valuable stock was perceived to be at risk. Clearly the respondent had to deal with the situation. The claimant was suspended with pay pending investigation. The respondent has an Employee Handbook that includes, among other things, Disciplinary Rules and Procedures. The respondent accepted that the claimant was not given written details of the allegation against him and neither was he allowed to bring a representative to the meetings. The HR manager conducted the investigation and dealt with the disciplinary procedure. The claimant was not given the opportunity to appeal the decision to dismiss him.

The Tribunal finds that there were serious flaws in the procedure used to dismiss the claimant and as a result find that the dismissal was unfair. The claimant, by his actions, and by his

inconsistent explanations of his actions, contributed substantially to his dismissal. The Tribunal is also not satisfied that adequate efforts had been made to mitigate loss.

The claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and the claimant is awarded the sum of €5000.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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