EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:	**CASE NO.**
EMPLOYEE - appellant	PW373/2011 UD1834/2011 TE247/2011

against the recommendation of the Rights Commissioner in the case of:

EMPLOYEE -appellant

and

EMPLOYER ***- respondent***
EMPLOYER ***- respondent***

under

TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001
PAYMENT OF WAGES ACT, 1991
UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr. J. O'Neill
Mr C. Ryan

heard this appeal at Dublin on 6th February 2013

Representation:

Appellant(s): Mr. Richard Grogan, Richard Grogan & Associates, Solicitors,
16 & 17 College Green, Dublin 2

Respondent(s): Mr Patrick Cagney, 23 Chestnut Grove, Dun Boyne, Co. Meath

This case came before the Tribunal by way of an appeal by an employee appealing against the determination of the Rights Commissioner reference r-093328-ud-10/MMG, r-093329-te-10/MMG, and r-093331-pw-10/MMG

Determination

The appellant came before the Tribunal on appeal from the Rights Commissioner hearing at which the appellant made no appearance. The appellant worked with the respondent contract cleaning company since March of 2004. The appellant worked primarily at a third party pharmaceutical manufacturing company which said company was subject to very strict and vigorous hygiene and Quality Control. It is common case that the appellant was given annual training in the "Good Manufacturing Practice" Code which is implemented in workplaces of this type across the world.

The third party pharmaceutical company was adamant that high standards be maintained at all time and the respondent company was under an obligation to ensure its employees operate within the expectations required.

The appellant had been the subject of a disciplinary process in 2008. This had been regarding the appellant's standard of work in the cleaning rooms. This resulted in a verbal warning being delivered to the appellant in January 2008.

The best part of two years later the appellant was again disciplined in connection with a complaint made by an In-house manager wherein it was stated that the appellant was cleaning glassware in the laboratory without wearing gloves. The appellant had exposed herself to acetone in the process. There is an onus on employees to use the personal protective equipment with which they are provided.

The appellant was given a final written warning on foot of this complaint. It is worth noting that the appellant was not advised of her entitlement to representation during the course of this disciplinary process and the level of English comprehension that the appellant would have had remains uncertain.

The final written warning issued on the 10th Of November 2009. The significance of a final written warning is not contained in the letter nor is a right of Appeal given in the letter.

To its credit, the respondent company was in the process of updating its company handbook and certainly its 2011 document is excellent and vastly improved in detail on the one dated September 2003. However, what is unclear to the Tribunal is what staff handbook applied at the time when the appellant's behaviour came into focus.

Once again the appellant's behaviour came into focus in and around March 2010 when a plant manager made a complaint that the appellant was chewing gum in an unauthorised area and absolutely contrary to the no drinking and eating policy applied in the plant.

A Mr O'K on behalf of the respondent company called the appellant into a disciplinary meeting in direct consequence of this complaint raised. The appellant met with Mr. O'K. Again the nature of the meeting may not necessarily have been made known to the appellant and she certainly was not asked to bring a representative or somebody to assist with any translation that may be required.

While the appellant quite clearly accepted that she knew that there was to be no eating and drinking on the premises the Tribunal cannot be confident that the appellant understood that the outcome of this meeting could lead to her dismissal this was particularly so as the appellant was

already on a final written warning.

It does not appear that the appellant understood what the significance of having a previous written warning might have in relation to any subsequent behaviour and this fact was not made clear to the appellant by Mr. O'K.

On balance the Tribunal accepts that the appellant was unfairly dismissed by reason of the inadequate investigatory and disciplinary processes applied by the respondent. It is unreasonable and unfair that a company with four hundred employees would not have an adequate, accessible and transparent disciplinary structure. However, there can be no doubt that the appellant has significantly contributed to the situation that gave rise to her dismissal and her on-going breaches of strict policy put in jeopardy the relationship the respondent company had with the pharmaceutical company and which it had to preserve.

The Tribunal awards the Appellant €5,000.00 under the Unfair Dismissals Acts, 1977 to 2007 and thus upsets the Rights Commissioner's determination and the appeal succeeds.

No evidence was furnished in relation to the Payment of Wages Act, 1991 and the Terms and Condition of Information Act, 1994 to 2001. These appeals fail and the Tribunal upholds the determination of the Rights Commissioner.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)