

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NOS

EMPLOYEE – *claimant*

UD1542/2011  
MN1613/2011

against

EMPLOYER – *respondent*

Under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. O’Leary BL  
Members: Mr T. O’Sullivan  
Mr J. Moore

heard this claim at Drogheda on 7<sup>th</sup> January 2013

#### **Representation:**

Claimant: In person

Respondent: In person

The determination of the Tribunal was as follows:-

The claim for unfair dismissal was lodged outside the time limit specified in the Act. The Tribunal found that the grounds for the delay did not amount to exceptional circumstances and therefore the Tribunal is unable to extend the time limit. Accordingly the Tribunal has no jurisdiction to hear this claim.

The claim for minimum notice was contested so the Tribunal heard evidence on the manner of the claimant’s dismissal.

#### **Claimant’s Case**

On the day he was dismissed the claimant was due to arrive at work at 12.00pm. At 11.30am the respondent phoned him demanding to know where he was because he should have started at 11.00am. This was the first the claimant heard that his shift had been changed. He told the respondent that he would be in as soon as possible. The respondent replied telling him not to bother because he was fired.

During the phone call the respondent did not accuse the claimant of giving free food to friends. The previous week the claimant had a conversation on the matter with the respondent. During a shift on which the respondent was not herself working the claimant did give free food to a customer because on a previous occasion this customer's order had been short. It was the practice there to look after customers. The claimant could not recall what item he gave to the customer. The claimant was satisfied that he had the authority to do this.

The claimant accepted that he had been late for work on 3 or 4 occasions during the 2 weeks before his dismissal. This was because his mother was unwell.

The claimant was not employed during the 4 weeks following his dismissal.

The claimant's mother gave evidence. On the day of his dismissal the claimant did not go into work. He was out of the house for only about 15 minutes, less time than it would take him to get there. He was not happy when he returned.

### **Respondent's Case**

The respondent gave evidence. She had had it out with the claimant the previous week because of his coming to work late. The claimant was not late because of his mother but because he was out partying and could not get up. She gave the claimant more chances than any other employee.

Her recollection is that the claimant stormed out when she confronted him about giving free food. She is the only one who could authorise such an action. She accepted that this policy was not written down. She was in charge and everything had to go through her.

### **Determination:**

As the claim was lodged outside the statutory time limit, and no exceptional circumstances prevented him from putting in his claim the Tribunal determines that it has no jurisdiction to hear the claim. The claim under the Unfair Dismissals Acts 1977 to 2007 fails.

His claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 succeeds and he is awarded the sum of €1400.00 being 4 weeks pay.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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