

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM) OF:

CASE NOS.

EMPLOYEE – *claimant*

UD1110/2011  
MN1203/2011  
WT455/2011

against

EMPLOYER – *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 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: Ms P. McGrath BL

Members: Mr P. Pierce  
Mr S. O'Donnell

heard this case at Dublin on 21<sup>st</sup> October 2012 and 22<sup>nd</sup> February 2013

Representation:

Claimant:

Respondent:

The determination of the Tribunal was as follows:

The claim under the Organisation of Working Time Act 1997 was withdrawn.

**Determination**

The Tribunal carefully considered the evidence adduced in the course of this two day hearing. The claimant came before the Tribunal alleging that he was unfairly dismissed by the respondent company in and around the 4<sup>th</sup> of January 2011.

The claimant had been working with the respondent company as a trainee accountant for two years prior to the dismissal. Two witnesses gave evidence on behalf of the respondent company to the effect that it became apparent to management within the company that there was some unusual and irregular e-mail activity on the claimant's computer such that the

respondent was concerned that the reputation and brand name of the respondent company was in jeopardy.

The claimant (who had been out on study-leave at the time of the discovery) was advised that an irregular e-mail had caused some concern and that the company wanted to conduct a fulsome investigation. The claimant's ability to enter the place of work was stopped pending the outcome of the investigation and he remained out on paid leave.

The claimant's immediate manager in conjunction with a member of the HR staff conducted an investigation and went on to conduct a series of interviews with the claimant albeit the last interview became a disciplinary meeting and a sanction was imposed before the end of that meeting.

At the conclusion of the investigation the investigators came to the conclusion that the claimant had been conducting a business during his hours of employment with the respondent. The respondent in particular was concerned that the claimant was operating his business in the name of the respondent company. The evidence was set out to the Tribunal and the fact of it was not denied by the claimant who maintained that he was only guilty of assisting a friend in a small way and that such work was done outside of office hours.

The investigators found the claimant to be evasive and non-committal during the course of the meetings conducted. There can be no doubt that the claimant's behaviour was most frustrating.

For reasons unknown the investigators ultimately held the disciplinary meeting during the course of which they made the decision to dismiss the claimant by reason of the serious breach of trust. The Tribunal acknowledges that it is not best practice for investigators to become decision makers.

The Tribunal finds that the decision of the respondent to dismiss the claimant was not unfairly based but does find fault with aspects of the procedures used.

The claimant was employed in an accounting role, and lost credibility and trust through failing to address openly and honestly the respondent's concerns regarding his extensive use of their secure e-mail systems and paperwork for his own purposes. The claimant's counter allegations of false documentation, lack of a second disciplinary meeting and contrived minutes are not credible to the Tribunal. An open and apologetic response may have justified a lesser penalty than dismissal, but questions were met with prevarication from the claimant.

Regarding procedures, the respondent should have made clear from the outset that serious misuse of the respondent's systems and documentation could lead to dismissal. This was not apparent to the claimant until the final meeting. Additionally, in a large company like the respondent's, the final report of the investigation and the hearings which decided on dismissal should have been referred to a higher level for consideration and ratification, and not simply agreed by two individuals involved in the hearings. Furthermore, notes of the investigation and disciplinary meetings should have been copied to the claimant, and signed by him as a written record of the discussions, particularly in the case where English was the claimant's second language and he had refused representation. Whilst the employee handbook indicates that the claimant should have asked for the notes in order to get them, the Tribunal does not find this a reasonable practice and demand. The claimant should be given interview notes as a matter of fair procedure.

The Tribunal determines that the failings in the procedures used bring an element of unfairness to the dismissal. However the claimant contributed to a significant extent to the outcome. The claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and the claimant is awarded the sum of €4000.00.

The claimant is awarded the sum of €1092.00 being 2 weeks wages under the Minimum Notice and Terms of Employment Acts 1973 to 2005

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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