

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NOS.

EMPLOYEE – *claimant*

UD1702/2011  
MN1760/2011  
RP2244/2011

against

EMPLOYER – *respondent*

under

**UNFAIR DISMISSALS ACTS 1977 TO 2007  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
REDUNDANCY PAYMENTS ACTS 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr D. Moore  
Mr J. Flannery

heard this claim at Trim on 4<sup>th</sup> March 2013

Representation:

Claimant:

Respondent:

The determination of the Tribunal is as follows:

**Determination**

The claimant came before the Tribunal claiming that he was unfairly dismissed following termination of employment for gross misconduct on the 27<sup>th</sup> May 2011.

The Tribunal has carefully considered the detailed evidence adduced in the course of this hearing. The claimant had been a long standing employee of the respondent company having been employed as a loader from 2004. The respondent company is a food holding and distribution company which employed between 300 and 400 employees.

At a date unknown but before the 22<sup>nd</sup> of May 2011 certain CCTV footage came to the attention of the claimant's management and on foot of which the company was minded to conduct an investigation with a possible disciplinary outcome.

It is worth noting that the Tribunal never had sight and never required sight of the full CCTV

footage although some stills were provided for in the papers. In the course of evidence the claimant never denied the existence of the footage or the content of the CCTV footage. It was on foot of the content that the respondent company initiated the investigation.

The Tribunal notes that the stills provided show a wilful manhandling of a certain vending machine in the canteen area of the respondent's premises. The vending machine has been tipped forward in disregard for personal safety and in a clear and unambiguous attempt to raid the contents without the need to pay for same.

The claimant was called into a series of meetings from investigation to disciplinary to appeal. There can be no doubt that the best practice in such a scenario would be to ensure that any person, when subject to an investigation and/or disciplinary process which might result in a dismissal should be fully aware of the seriousness of the situation.

The company has not adhered to best practice insofar as there had been no attempt to provide adequate or any translation in the course of the meetings. There is some onus on a company employing a large non-national workforce to ensure that individual members of the workforce are provided with such a basic right as a right to know what is being said at meetings, what the intent of the meeting is and how serious any meeting is intended to be.

In this regard, the Tribunal notes that their two letters of the 22<sup>nd</sup> of May 2011 and the 25<sup>th</sup> of May 2011 inviting the claimant to the disciplinary and disciplinary outcome meetings fail to say at all that the potential outcome of these meetings is the loss of employment.

It seems to this Tribunal from the meeting notes provided that the claimant seemed to believe that an apology and an offer of recompense would somehow suffice in terms of righting the wrong. The Tribunal fully accepts that the CCTV behaviour demonstrates a serious breach of the trust that any company must expect to be able to place on its employees. The ultimate sanction was not a disproportionate one to what happened. The Tribunal is however concerned that the road to reaching this decision was lacking in an aspect of fairness. There has to be some onus on employers to act reasonably in ensuring that its employee understands exactly what is going on. Much was made of whether a translator, an interpreter or a representative should be provided. The Tribunal cannot state which, is best practice so long as, on the face of it, the Tribunal is satisfied that the claimant, whose job is on the line, is fully aware of what is going on.

The respondent herein did not demonstrate that the claimant knew how serious his situation was.

There can be no doubt that the claimant contributed to his own dismissal. Any unfairness arising was purely procedural and in the circumstances the Tribunal finds that the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and the claimant is awarded compensation in the sum of €2250.00.

The claim under the Redundancy Payments Acts 1967 to 2007 is dismissed.

The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 succeeds and the claimant is awarded the sum of €2828.00 being four weeks wages.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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