

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM(S) OF:**  
EMPLOYEE

*- claimant*

**CASE NO.**  
UD271/2011  
MN269/2011

against  
EMPLOYER  
under

*- respondent*

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. J. Smith

Members: Mr. D. Morrison  
Ms. A. Moore

heard this claim at Letterkenny on 13th July 2012

**Representation:**

Claimant(s) :  
Respondent(s) :

The determination of the Tribunal was as follows:-

**Respondent's Case:**

The respondent company was engaged in the manufacture of stainless steel products. The claimant was employed as a welder fabricator.

On November 9<sup>th</sup> 2010 the claimant was sent to a client of the respondent to carry out a job. This was a very important client to the respondent company. The claimant returned to the office and asked the owner (EMN) if the Head of Maintenance (DML) in the factory he had been working had been in contact with him. EMN asked why and was informed the claimant had had a "blazing row" with DML. The claimant felt DML had been talking down to him and made him feel like a child.

The claimant had removed a filter from a working sterile filling machine without consultation as to whether to do it or not. A row ensued and the claimant was asked to leave the factory, leaving the respondent's tools behind. EMN tried to contact DML but could not. He again spoke to the claimant asking why there had been an argument when he felt no representative of the respondent should be arguing with a "long term and respected customer" or any customer of the respondent. He again contacted DML who informed him that he had never been addressed in that manner in the past. He never wanted the claimant on the premises again.

EML wrote to the claimant concerning the incident. The claimant was informed that he, EML, would consider the serious matter and would make a decision within 48 hours as to whether disciplinary action would be taken. He was given an opportunity to reply to the letter. EML met the claimant the following Monday to discuss the matter. The claimant got very abusive and began swearing. He said he did not have to listen to it and left. The claimant had walked out on previous occasions in November 2009 and March 2010. On one occasion he walked out and had not returned for a week. EML had told him to leave on another occasion for leaving a door open and products to get wet. The claimant returned to work the following day.

EML said he could not put up with the claimant's manner or attitude and the respondent's most important client did not want him on their premises. The claimant was sent a letter dated November 15<sup>th</sup> 2010 informing him of his dismissal. He had 7 days to appeal the decision.

EML told the Tribunal that the respondent had never done any more work for the particular client in question which was devastating to the business. All staff had been let go and EML was now only working part-time for the company.

On cross-examination EML said he was not aware if the claimant had been given copies of the two incidents reports dated November 5<sup>th</sup> 2009 and March 4<sup>th</sup> 2010. EML had not informed DML prior to the claimant's attendance at the factory but had told the claimant to contact DML on his arrival. When put to him that the claimant had been put under pressure to carry out a task he replied he had not.

When asked why he had sent the claimant the letter dated November 9<sup>th</sup> 2010 while he was on annual leave he replied that he, EML, wanted the claimant to know the seriousness of the matter. He stated that he had not dismissed the claimant on November 15<sup>th</sup> 2010, the day of his return from leave. The claimant had walked out. The staff that left since were not paid redundancy.

When asked by the Tribunal he said he had not asked if anyone had witnessed the incident. He completed the work the claimant had not been allowed to. When asked he said that the claimant could have appealed the decision to him, EML.

### **Claimant's Case:**

The claimant gave evidence. He said that there had been a very stressed atmosphere in the respondent company. There was a personality clash and he had been told he was not carrying out his work fast enough.

In respect of the incident of the open door he explained that he had a throat complaint and as there were no fans he opened the door for some fresh air. The respondent was aware of his throat complaint. In respect of the incident in question he explained that he only had the filter cap off for a few seconds and thought there was a second filter cap in place. He asked DML to stop the machine so he could finish the job but he would not. He told DML that if he could not finish the job he would leave with his tools. DML said he did not like his attitude. He put the tools in the van and returned to the respondent company where he spoke to EML.

EML tried to contact DML but could not. DML later came to the premises. EML told him DML did not want him back on the premises. EML told him he could not argue with customers and was to go home and think about it. He did not think his job was at risk. EML told him it

was a very serious incident. He was not told EML was investigating the matter or was invoking the disciplinary procedure.

On November 15<sup>th</sup> 2010 he returned to work from leave. He was met at the front door. EML told him he had had enough with his attitude and swearing. He was told that he, EML, had had enough and he was to be let go. The incident with DML was “the final straw”. He was dismissed. He received his letter of dismissal, P45 and a cheque.

The claimant gave evidence of loss. No minimum notice was paid.

**Determination:**

The Tribunal finds that the claimant was dismissed and this dismissal was unfair. However, the Tribunal finds that the claimant had contributed to this dismissal due to the fact that he had admitted carrying out work without prior knowledge of the Head of Maintenance that he was doing so, and his conduct after that action.

The Tribunal awards the sum of € 20,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Loss having been established the Tribunal awards the sum of € 940.00, this being two weeks gross pay, under the Minimum Notice and Terms of Employments Acts, 1973 to 2005.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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