

## **EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:  
Employee

CASE NO.  
UD470/2006, MN295/2006

Against

Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. E. Kearney

Members: Mr. J. Redmond  
Ms H. Henry

heard this claim at Galway on 2nd July 2007

### **Representation:**

Claimant : Mr. Noel Rhatigan, Rhatigan & Company, Solicitors,  
Liosbaun House, Tuam Road, Galway

Respondent : Mr Conor Power B L instructed by  
McCann Fitzgerald, Solicitors, 2 Harbourmaster Place, I.F.S.C., Dublin 1

The determination of the Tribunal was as follows:

### **Respondent's Case**

The company's business human resource manager outlined her involvement in this case. Her main role was to ensure that fair and proper procedures were applied in the interaction between the respondent and the claimant arising out of an incident at a company sponsored social evening in December 2005. The witness did not actively take part in the company's decision to ultimately dismiss the claimant in January 2006. She referred to the claimant's contract of employment and what she called the respondent's corrective action process. The witness highlighted that misbehaviour while attending company-sponsored events was an example of unsatisfactory performance or behaviour and that physical assault was an example of gross misconduct. The witness insisted that the company did simply not tolerate the latter. She was satisfied that the claimant was aware of that information. He was also informed of his right to representation at the appropriate meetings with the company. She added that employees were entitled to both feel and be safe as members of staff. The witness's direct involvement centred round the claimant's possible appeal of his dismissal. She corresponded with his legal team and coached the respondent on that process.

A human resources consultant employed by the respondent conducted several interviews with the claimant and others over a reported incident at the company's Christmas social outing on the 11th/12th December 2005. The respondent had provided two drinks and a meal to its employees at a local hotel for this event. The first investigation interview with the claimant took place on 15th December in the presence of the witness, the claimant, his representative, and his immediate supervisor. A second interview was conducted with him on 22nd December. During the latter interview the claimant was presented with statements from other onlookers to the relevant incident. The claimant declined the offer to have a representative at that meeting. The witness again met the claimant in the presence of his supervisor on 12<sup>th</sup> January 2006. The claimant was invited to add anything to his statements. However he had nothing further to contribute. The witness then told him that the respondent's investigation had concluded and his supervisor informed him of the company's decision to terminate his employment. The witness then outlined the company's appeal process.

The witness read out the respondent's letter of dismissal addressed to the claimant and dated 16th January 2006. While acknowledging that the claimant was not the instigator of the incident the respondent justified their decision to dismiss him on the grounds of gross misconduct. The respondent based its decision on the claimant's own version of events and set aside the more damning statements alleging more serious wrongdoing. The respondent concluded that the claimant's behaviour amounted to a physical assault on another employee while attending a company event, albeit outside the company's premises. Such behaviour was unacceptable. The respondent also had to consider and protect its reputation and safeguard its future. The other employee directly involved in this incident was also dismissed.

A managing director of a local recruitment agency stated that the local employment situation was buoyant in the period from January 2006 to March 2007. She would be surprised if a person with the claimant's experience would be out of work long in the Galway region. However it was not easy for a dismissed person to acquire work. An employee who attended the same company's social outing said she stood by her statement made to the respondent on 21<sup>st</sup> December 2005. According to her account the claimant's behaviour was more aggressive than what he described.

### **Claimant's Case**

The claimant accepted he was involved in an altercation with a former colleague at the company's Christmas party in December 2005. That altercation had its origin in an ongoing dispute between them over how a payment was to be transacted following a road accident that involved both parties. According to the claimant's statement made on 15th December the former colleague had been "throwing snide comments" towards him during the course of the night. Towards the end of the event she slapped his face and in reacting he knocked a glass from her hand. He also raised his hand in a gesture of defence as he felt she could have used that glass as a weapon against him. In accepting he was drunk during that incident the claimant said his reaction would have been different had that not been the case.

Neither the claimant nor the former colleague reported that incident to the respondent. They wanted to forget about it. He felt his job might have been at risk but did not expect to be dismissed as a result of the company's investigation. He had been with the company for over two years at the time and had not been subject to any disciplinary action up to this incident. The claimant accepted the respondent's right to investigate the reported incident. However he did not really accept he behaved badly that night except for that assault incident.

## **Determination**

Having carefully considered the adduced evidence the Tribunal finds that the claimant's dismissal was fair in the circumstances. The Tribunal accepts that the company had no other reasonable option but to dismiss the claimant. While there may have been mitigating circumstances for his behaviour that night these do not outweigh the claimant's responsibility to conduct himself in a responsible manner and in accordance with company policy. The claim under the Unfair Dismissals Acts, 1977 to 2001 therefore fails.

Dismissal due to gross misconduct excludes the claimant in this case from his entitlements under the Minimum Notice and Terms of Employment Acts, 1973 to 2001. Accordingly his appeal under those Acts fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

