

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

UD683/2007
MN551/2007

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: Mr. L. Ó Catháin

Members: Mr. D. Hegarty
Mr. J. McDonnell

heard these claims in Cork on 11 January 2008 and 11 March 2008

Representation:

Claimant :

Mr. Patrick G. Goold, J. F. Goold & Co., Solicitors,
Macroom, Co. Cork

Respondent :

Mr. John Barry, Management Support Services,
The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:-

Respondent's case:

The manufacturing manager giving evidence said she was the most senior person in the factory having been working there for eight years. She worked initially as a general operative and was promoted to her current role on 10th October 2005. The claimant worked as an operative on various machines and had been with the respondent for about ten years. Witness had worked with her as a general operative and they got on fine. On 19th September 2005 while witness was setting up the machines she had a problem with the claimant. The claimant and other operatives came into the office and urged witness to tell the executive chairman that she would not do the supervisors job. The supervisor who was a friend of the claimant's had been made redundant. In January 2006 one of the girls came to witness saying that the claimant was making her feel uncomfortable about her work. Witness met with the claimant to discuss the matter and there were no further issues until May 2007.

On 28th May 2007 the claimant had been working on the lip balm and she called witness into the room and in a raised voice asked her to change a light bulb where one out of four needed replacing. This sounded like an order. Witness said she was setting up the machines the next day when the claimant said in a demanding, raised voice "we want to talk to you". Witness enquired as to what was the problem and the claimant replied that they did not want to be working on the same machine for more than a day. Witness believed the claimant was referring to her memo dated 25th May 2007 wherein she stated that as and from Monday 28th May there would be no guarantee that one would be on a different machine every day/two days. She wanted to see if she could change production by trying something new. The claimant stated that "we" are not happy and when asked who are the "we", there was no reply. The claimant was trying to get the other three girls to tell witness they were not happy with the possibility of being on the one machine for a week or longer. Witness asked the claimant not to be leading the others, that each one could speak for herself. When witness asked the other girls they replied that they did not have a problem. The claimant said there was no f--king way that she was going to fill lip balm for a week. When asked to stop shouting the claimant replied that she was not shouting but was trying to f--king understand and that the workplace was all rules and regulations.

The claimant then wanted to know what the operations manager thought of the new work arrangement and witness assured her that it was her decision and not that of the operations manager. She then said she did not give a f--k and was very aggressive. Witness noticed after a while that the claimant was speaking with another girl D and demanding her to say she had an issue with the machines. When she told claimant not to be speaking in that manner to the other girl the response from the claimant was that while she the witness could treat the others like slaves but not treat her in the same fashion. Witness returned to the office and spoke to the operations manager on the telephone and she promised to deal with the matter after that. There was no issue for the rest of that day Tuesday however when she came to work on Wednesday she was greeted in a hostile manner by the claimant wanting to know whether or not she was going to change the f--king light bulb. When she replied that she had asked J, the claimant made reference to health and safety regulations and that she would get someone to change the bulb. During this time the claimant was poking her finger into witness's face. Witness was very upset and stated that this incident was witnessed by T, her boyfriend. She reported the incident to the operations manager.

At 11am she asked the claimant to come to her office for 11.15am and at the appointed time she came as far as the door and stated she would not come any closer without a witness. The claimant stated there was not anyone fit to be a witness. It was then suggested they would talk in the afternoon and in the meantime the claimant would find a witness. At the claimant's suggestion it was agreed the meeting would take place the following day. When witness attempted to arrange a specific time for the meeting the claimant refused to come into the office

as it could be bugged. Later that day the claimant and the operations manager came to her office and the meeting was arranged for 3pm the next day. The claimant was suspended with pay pending that meeting. The claimant stated she would be contacting her solicitor and she then said to the operations manager that if she was in her position she would not have witness on the factory floor. The claimant was then given a letter as she had requested confirming her suspension on full pay. As witness turned to go back to her office the claimant passed the remark "you'd better watch yourself" and reference was made to another case before this Tribunal. Witness felt threatened.

In cross-examination witness said that the changes in work practices introduced in memo of Friday 25th May 2007 and to come into effect on Monday 28th May 2007 were decided on by herself and she did not consult with any of the operatives. There was no discussion with the claimant and her colleagues on Monday 28th May. In relation to the changing of the light bulb it was possible that it was out for two or three weeks but witness was not asked to change it prior to Monday 28th. She denied that five Latvian girls complained about the heat in the lip balmer. She agreed that the claimant asked her to ring the operations manager on the Monday but she did not do so. At the first meeting with claimant, witness and the operations manager she was not told it was a disciplinary meeting. Witness had no difficulty with the claimant until the few days prior to her dismissal.

In answer to questions from Tribunal members regarding the memo witness said that prior to this she would have put a notice in the canteen in relation to time off or problems with machines. This was the first time for witness to communicate regarding work changes. The operations manager made the decision to dismiss the claimant. She did not accept that the light bulb was gone for three weeks.

The gentleman T gave evidence that he observed the incident between the claimant and witness regarding the changing of the light bulb and the claimant poking her finger into the face of witness.

In cross-examination he said that foul language was used.

In answer to questions from Tribunal members he said while he has been in the factory for ten years maintaining the machines and he does not know the claimant well, however he never had any problems with her. He found that the incident was out of character for her. There was a slight tension amongst one or two of the operatives. At peak times the number of employees would be fifteen.

Giving evidence, the respondent's operations manager said that she was based in Dublin but that she would be in Cork two or three days per week and that the claimant's supervisor reported to her. Asked when she had heard of the issue between the claimant and the supervisor, the operations manager said that she thought it had been 29 May 2007 (a Tuesday) when the supervisor had phoned her in Dublin.

At that time the supervisor told the operations manager that the claimant had issues with the supervisor and that the claimant had been aggressive and agitated. When the respondent subsequently met the supervisor in the factory, the supervisor was very stressed and unhappy. The supervisor said that the claimant had been threatening and abusive. Subsequently the respondent scheduled a Wednesday morning meeting with the claimant. When the operations manager arrived at the factory at about 9.00 a.m. on the day of the meeting, the supervisor told her that things had

escalated and that the claimant had been very abusive to her. The claimant was asked to attend a meeting in the supervisor's office at 11.00 a.m. but, the operations manager told the Tribunal, the claimant said that she would not attend without a witness. The operations manager acceded to this and told the claimant that she could get a witness. The operations manager thought that the claimant would get someone but the claimant said that nobody in the factory was fit to be a witness. The claimant also said that the office might be bugged and that the respondent's executive chairman might walk in. The claimant was quite agitated. (The operations manager told the Tribunal that she was not surprised at this and the operations manager agreed when her representative put it to her that she saw this as a continuation of previous behaviour by the claimant.) The operations manager suggested that they hold the meeting that afternoon but the claimant said no. They agreed on 11.00 a.m. on Thursday because the claimant could not get a witness till then.

Asked about the claimant's suspension, the operations manager said that she had felt it better not to have the claimant on a factory line. The claimant was suspended on full pay. The claimant said that she wanted this in writing. The claimant had gone to the lip-balm room at this time. The operations manager went to "organise the letter". The claimant told the supervisor that the supervisor had "a lot to learn in life". The claimant told the operations manager that it had been "a sad day" that the supervisor had been put "in charge of managing the girls". The operations manager organised the letter. The claimant was with the respondent's executive chairman. The operations manager handed the claimant the letter and left the claimant with the executive chairman.

The next day the claimant arrived at the respondent's premises at 3.00 p.m.. Asked at the Tribunal hearing if anything had happened before the meeting, the operations manager said that she (the operations manager) had spoken to the executive chairman and that they had gone over what had happened.

The said Thursday meeting was attended by the operations manager, the executive chairman, the claimant and by the claimant's witness who gave her name but not her profession. The executive chairman took on the running of the meeting. The operations manager just listed the issues. These were the events of the previous three days.

Asked at the Tribunal hearing how the meeting had ended, the operations manager replied that the respondent had said that it wanted to see the claimant the next week. The claimant was still suspended on full pay. The executive chairman got called away quite suddenly on the following Wednesday. The next week, the meeting reconvened.

The purpose of the 13 June 2007 meeting was to raise the issues that were a problem. The executive chairman led the meeting. The claimant denied some of the issues and, in some cases, said that she could not remember.

Asked at the Tribunal hearing about the issues that had related to the supervisor, the operations manager replied that she could not recall if the claimant had denied or accepted them but that the respondent had said that it would be in contact with the claimant after the respondent had considered the claimant's responses. The operations manager told the Tribunal that the executive chairman made the decision to dismiss the claimant.

Under cross-examination, the operations manager said that it had been on the morning of Tuesday 29 May 2007 that she had first become aware when the supervisor had told her by phone that there had been an issue on Monday 28 May about the letter as to the change in work practices. The claimant had heard of the said change on the previous Friday. The claimant had gathered girls to

dispute the change in work practices. There had also been a housekeeping issue in the letter.

Asked if there was any note of what had been said on Tuesday 29 May, the operations manager replied that she probably had made a note but that she did not have it with her. She (the operations manager) told the Tribunal that that she had not met the claimant on that Tuesday but rather that she had just heard the claimant's "side". It had been after nine that the operations manager had got to the factory. The supervisor then told her that there had been an incident between eight and nine. The operations manager had wanted "a chat" with the claimant.

Asked at the Tribunal hearing about the change in work practices from the Friday preceding Tuesday 29 May, the operations manager replied: "I had to have an unbiased view. There could have been issues I did not know of." She added that the respondent had been trying to streamline its work practices.

Asked if the supervisor had been agitated at the time when the claimant was suspended on full pay, the operations manager replied that the supervisor had calmed down but that the claimant had not done so. The claimant was suspended at around noon on Tuesday 29 May. The operations manager told the Tribunal that the claimant had to leave the factory floor at that stage. Some people worked alone. Up to then the claimant had been working alone filling lip-balm.

When the operations manager told the Tribunal that the claimant had sought it in writing that she was suspended on full pay it was put to the operations manager that the claimant had never sought this. The operations manager replied that the claimant had indeed done so and that it had been done in front of the supervisor. The operations manager confirmed that the claimant had also complained about deficient lighting.

The operations manager confirmed that there had been a Thursday meeting at 3.00 p.m. and that the claimant had brought a witness who gave her name and, when asked, said that she was not a solicitor. It was put to the operations manager that the witness was related through marriage to the claimant. The operations manager replied that she did not know about this but she confirmed that the executive chairman had attended the meeting.

It was put to the operations manager that the witness had intervened in the meeting and had been told that she was there as a witness who could not address the meeting. The operations manager said that the witness had accepted this.

Asked if the only issue at the meeting had been the events of the previous days, the operations manager said that this had been the main issue. She confirmed that the claimant had brought up pay, lighting and work practices and said that the supervisor had not attended the meeting.

The operations manager told the Tribunal that the executive chairman had told her that he would report to the gardai that the claimant had threatened the supervisor and that she thought that it had been on the Thursday morning that she had seen him go to do this. However, when it was put to the operations manager that the respondent had had its mind made up about the claimant the operations manager disagreed.

Referring to the further meeting which was held on Wednesday 13 June, the operations manager said that it had taken about an hour and that again the supervisor had not attended. The operations manager said that reference had probably been made to lighting, that reference could have been made to work practices and that she thought that reference was also made to the threat.

When it was put to the operations manager that a witness had said that what had happened on Tuesday 29 May had been a storm in a teacup the operations manager replied that it had gone beyond being something that could be resolved by the claimant and the supervisor. The operations manager added that the respondent had accepted the supervisor's version of events. Asked if the respondent had invited the supervisor to a meeting, the operations manager replied that she thought that the respondent had met the supervisor on 6 June. Asked if the respondent had tried on Thursday 31 May, on Wednesday 6 June or on Wednesday 13 June to resolve the matter, the operations manager replied that it had not been possible because the claimant had been shouting a lot. When it was put to the operations manager that the claimant's witness would say that the claimant had been quite calm the operations manager disagreed. When it was again put to the operations manager that the respondent had made up its mind to get rid of the claimant the operations manager again disagreed.

In re-examination the operations manager said that she would be in Cork most weeks, that she would be on the floor at some stage each time, that she was sure that she had "bumped into" the claimant and that "the place is not so big". The operations manager said that the claimant had never approached her about lighting.

Questioned by the Tribunal, the operations manager said that "work changes just evolved" and that "memos went out about other issues". She said that she and the executive chairman had considered the issues and the claimant's responses. She confirmed that on 14 June 2007 the executive chairman had signed a letter to the claimant terminating the claimant's employment with four weeks' pay in lieu of notice.

The operations manager confirmed that she had suspended the claimant. Asked what had changed her from wanting a "chat" with the claimant to suspending her, the operations manager replied that the claimant had threatened the supervisor. Asked why she had felt it necessary to suspend the claimant, the operations manager replied that the claimant had been so agitated that it was better that the claimant not work with the other girls until the Thursday meeting.

Giving evidence, the executive chairman said that he was based in Dublin but that he would be in Cork two or three days of each working week. He explained that the respondent made miniature cosmetics for incorporation into complimentary giftbags for first and second class passengers on flights. He added the respondent's factory was about ten thousand square feet in area and that the respondent had about twenty staff of whom twelve to fourteen would usually be on the factory floor.

On the morning of Tuesday 29 May 2007 the executive chairman heard from the operations manager. At about 4.00 p.m. that day the supervisor briefed the executive chairman and the operations manager about the events of the last couple of working days. The supervisor was quite concerned about what had happened.

The executive chairman did not attend the Wednesday meeting with the claimant because he "was doing other things". He and the operations manager shared an office. The operations manager told him that she was writing a letter suspending the claimant with pay. The executive chairman went out on the factory floor. He came across the claimant at a workstation. She said she was saying

goodbye to her friends, that she was very stressed and that she was going for a cup of tea. He went with her.

The executive chairman told the Tribunal: "I kept myself to myself." However, the claimant said something like that the supervisor could not manage a cat in a cage and that it had been "a sad day" when the claimant had been "appointed to manage the girls".

The claimant had no way of getting home. The executive chairman offered her a lift. After initially failing to respond, the claimant said: "You're dismissing me and giving me a lift home. No, thanks!" He told her that she had not been dismissed.

Subsequently, the operations manager asked the executive chairman to join her and the supervisor to talk. The executive chairman heard that the claimant had threatened the supervisor saying that she had better watch her back and that she was now "dealing with the Murphys and not the O'Briens". The supervisor was very concerned because the claimant had not referred to herself alone but rather to the claimant's family. The claimant had said other derogatory things but the executive chairman paid particular attention to the physical threat regarding the supervisor being told to watch her back.

The claimant was invited to a meeting on the Thursday morning. The executive chairman attended. The executive chairman and the operations manager were concerned at the level of tension in the situation. They wanted the claimant's version of events. The claimant was quite agitated and used abusive language to them.

At this point in the Tribunal hearing, it was put to the executive chairman that the claimant would deny having used abusive language. In response to this, the executive chairman laughed at the prospect of the claimant's denial and said: "It would not be my definition of abuse."

The executive chairman continued his testimony to the Tribunal by saying that the claimant had not denied taking an employee from her workstation or asking employees to support her in not working five days on lip-balm. The claimant did deny having used abusive language. In short, the claimant denied some things and admitted others. The claimant said that she was being discriminated against in favour of non-nationals. She said that another employee had had her workpost cushioned but that this had not been done for the claimant. She said that the light over the lip-balm position had not been repaired but that a light elsewhere in the factory had been replaced.

The executive chairman told the Tribunal that lip-balm filling was done in a separate room which was lit by two fluorescent tubes which had two bulbs. One bulb was gone but the executive chairman told the Tribunal that he had "had no trouble reading the phone directory with a light gone" He added: "It's not a trivial matter to replace a bulb. We do repairs once or twice a month. The lighting was quite adequate for the meantime."

The executive chairman said to the Tribunal that the claimant had said that another employee had been exempted. Commenting on this, the executive chairman said that: the employee in question had hurt herself; that it had been a health and safety issue; and that the employee in question was still working in the same post.

The executive chairman told the Tribunal that the claimant had said that she was afraid of the operations manager and the supervisor. The years earlier in the millennium had not been without incident and the claimant had said that this would come out later when appropriate. The executive

chairman said that he was still puzzled about this but that it had seemed to be a threat. When the meeting ended the executive chairman said that the respondent would talk to the claimant on the following Wednesday (i.e. 13 June) and he asked her to return on that day.

At the Tribunal hearing the executive chairman was asked what was the purpose of the 13 June meeting. He replied that, having done his investigation, he had wanted the opportunity to present his findings to the claimant.

The Tribunal was presented with a list containing eleven allegations against the claimant. The claimant had been asked about these.

It was alleged that the claimant had “enticed” an operative away from the tube printer on the morning of 29 May 2007. The executive chairman told the Tribunal that the claimant had not denied this.

It was alleged that the claimant had undertaken a very abusive attack on the supervisor on 29 May, that the claimant had attempted to incite staff, against their wishes, to make complaints and that the claimant had undertaken an attack on the supervisor on 30 May. To this the claimant had said that she had asked people about working five days on lip-balm to which some had said yes and some had said no. The claimant had denied having undertaken a very verbal and physical attack on the supervisor on Wednesday 30 May and wanted to know if the supervisor had made that allegation to the gardai. The executive chairman had not responded.

It was alleged that on 30 May the claimant had spoken about the supervisor in a very derogatory manner twice to the operations manager and twice to the executive chairman. The claimant had responded that she could not remember.

It was also alleged that the claimant had refused to attend a disciplinary meeting on 30 May on the grounds that the respondent’s office might be bugged and that she would not go within an inch of the office with all that was going on. It was further alleged that the claimant had demanded her suspension on full pay in writing and had then announced to the executive chairman that the letter was not worth the paper it was written on. The claimant had denied ever asking for this in writing.

It was alleged that, at a disciplinary meeting on Thursday 31 May 2007, the claimant had refused to co-operate fully with the management investigation by deliberately withholding information about a male employee which she intended to use later in connection with her case. The claimant had responded that it was not a male employee but when she was asked if the employee in question was, in fact, female the claimant merely said that the employee was a person.

It was also alleged that the claimant had made the following threat to the supervisor before the claimant left the respondent’s premises on Wednesday 30 May: “You better watch out for yourself now because you are dealing with the Murphys now (and) not the O’Briens. Watch yourself and remember that you better watch your back.” The claimant had replied that the O’Briens had been forced out and that she would not be forced out. The executive chairman told the Tribunal that he had taken this as an admission because otherwise the claimant’s reply to the allegation would not have been applicable.

Asked at the Tribunal hearing if there had been other issues, the executive chairman replied that he could not recall.

Asked about the claimant's demeanour, the executive chairman replied that she had been much more composed and that, while there had been foul language at a previous meeting, there had not been foul language at this meeting. When the meeting ended the respondent thanked the claimant for coming in, said that her answers would be considered and told her that she would be informed of the result. After the meeting the executive chairman discussed the issues with the operations manager. It was ultimately the executive chairman's decision to dismiss the claimant because, in his words to the Tribunal, the claimant had been "carrying out a fair reign of terror" on the supervisor and the relationship had broken down. The executive chairman said to the Tribunal that this had been "progressive over a couple of days" and that there had been "no sign of regret". Therefore, he felt that the respondent should not continue to employ the claimant.

The executive chairman was asked if it had gone beyond a lightbulbs issue. He replied that lighting and housekeeping procedure issues could not have justified such aggression to the supervisor. If an issue (such as lighting) had been going on over a couple of weeks the claimant could have gone to the operations manager but had not done so. The executive chairman added that it was the supervisor's decision if she switched jobs around to make the work more pleasant. He said that one day as opposed to five was not an issue because if someone did five days of lip-balm that person would not do lip-balm again for eight or nine weeks. He told the Tribunal that rotation would be done to make the job more interesting because the respondent had to pay the minimum wage and try to keep its staff.

The executive chairman confirmed that, about eighteen months earlier, there had been an incident regarding the supervisor's succeeding the previous supervisor. Asked if any of the people involved in that incident still worked for the respondent, he replied that three of the six involved were still there.

The executive chairman told the Tribunal that "bad language" had been "liberally used" at the meeting of 13 June 2007 and that it had been "of the same intensity" as the supervisor had said to have been used with her. The executive chairman "was then absolutely convinced that bad language had been used on" the supervisor.

At this point in the Tribunal hearing the executive chairman was asked about the availability of work in the area (in the context of how easy or difficult it would be for the claimant to mitigate her loss by finding a new job). He replied that, on the minimum wage, there was plenty of work. By way of an example, he said that, after, in late 2007, the respondent had had to lay off four people, three of those people had got jobs "very quickly".

Under cross-examination, the executive chairman was asked about a warning letter that had been sent to the claimant. The executive chairman confirmed that he had seen it. When it was said that the supervisor had mentioned this letter and that the claimant said that it went back to January 2006 the relevance of this letter was queried and the respondent's representative said that the respondent was not relying on it.

The executive chairman confirmed that the claimant had worked with both the supervisor and the supervisor's predecessor. The supervisor had held her post for about eighteen months when the claimant's employment ended. The executive chairman added that in September 2005 the claimant had attempted to intimidate the supervisor. There had been six people around. He did not know if they had been involved. A disciplinary meeting followed. Asked if there had been any disciplinary issue as to the others, the executive chairman said that there had been but not as a result of what he

had mentioned.

The executive chairman stated that the claimant had been dismissed for the events of the final days of May 2007. It was put to the executive chairman that the claimant would say that she had tried to speak to the supervisor about the work procedure circular “on the Monday” (28 May 2007) and he was asked if he had any evidence about this. He replied that he had not and that he had not been in the factory until about 3.30 p.m. “on the Tuesday” (29 May).

It was put to him that he had said that the supervisor had briefed him. He confirmed this and said that it had taken place on the said Tuesday. He said that the supervisor had briefed him about the light in the lip-balm room, about the taking of another employee from her workstation, about trying to get people to join in a protest about lip-balm and about the amount of (bad) language that had been used on the supervisor.

Asked if he had had any involvement in the claimant’s suspension, the executive chairman confirmed that he had not and that he had expressed no view on this.

It was put to the executive chairman that he had spoken to the claimant in the canteen. He confirmed this saying that he had tried to avoid it, that he had made no comment and that the only contribution he had made in the canteen had been to offer to drive the claimant home. He subsequently met the supervisor and the operations manager again.

It was now put to the executive chairman that, as a result, he had gone to the gardai. He did not deny this saying that it was after intimidation and the threat to the supervisor “that something would happen to her at some future event”. He made a formal written complaint at a garda station “probably on the Thursday morning”. He added that this was “before the meeting”.

The executive chairman told the Tribunal that he had not been aware of the threat about “dealing with the Murphys and not with the O’Briens”. He opined that this “obviously” related to “somebody outside the company”.

It was put to the executive chairman that the claimant would say that she never said “watch yourself” or “you’d better watch your back”. The executive chairman simply replied: “That was in my complaint.” He acknowledged that he had not put the allegation to the claimant before he went to the gardai.

Referring, at the Tribunal hearing, to a meeting he had had with the claimant and the claimant’s witness, the executive chairman said that he had asked the witness to state her occupation but that the witness had refused to answer. He added that the bad language used had been “the F word”. It was put to the executive chairman that the claimant had said “Jesus!” and “Christ!” but not more. He replied: “I made notes.” He further stated to the Tribunal that the claimant had said that the O’Briens had been thrown out but that she would not be thrown out. He added that he had not dealt with pay.

It was put to the executive chairman that the claimant had not got the minimum wage when it had gone up by €0.40. He replied that she had got €0.25 extra.

The executive chairman was asked if the light bulbs would flash. He replied that they would not flash but rather that they would “just go out”. He said that the respondent had a continual programme of replacing lightbulbs.

It was put to the executive chairman that on Wednesday 6 June the claimant had gone to the factory with a witness but that the executive chairman had not completed his investigation and had been called away. The executive chairman accepted this saying that he had cross-checked statements but that he had wanted to find out what point the claimant would make.

Talking of the 13 June meeting the executive chairman said that the claimant had been “far more composed” and agreed when it was put to him that there was no allegation of bad language at that meeting.

The executive chairman was now asked about his reference in his testimony to the Tribunal to a “reign of terror”. He confirmed this referring to the intensity of the exchanges and said that it was “terrorising” to the supervisor. He said that he thought that the supervisor had “confirmed that in her evidence”. He accepted that the allegation was that the claimant had raised a finger to her face and caused her upset. It was put to the executive chairman that no assault had taken place but he replied: “Something very close to it.”

The executive chairman was asked if he had asked the claimant to withdraw something or to apologise. He said: “No.” He was asked if he had asked the claimant to go back working. He replied: “There was no sense of wanting to roll back the situation.”

It was put to the executive chairman that there was a direct conflict between the statements of the claimant and the supervisor about raising a finger to her face. The executive chairman replied that he had the evidence of another person who was the supervisor’s boyfriend and who had said that he had heard the claimant ask: “Are you going to change the lightbulb or not?”

When it was put to the executive chairman that he had made no attempt to resolve the situation he did not reply whereupon it was put to him that he “drove” it. The executive chairman replied that the claimant had indicated that there was no serious issue at stake and that the statement about the O’Briens and the Murphys had been made “with some venom and fire”. Asked if he had given the claimant a chance to speak, he replied: “I did not go out of my way.”

Asked if the respondent had an appeal process, the executive chairman said that employee relations were dealt with by the supervisor and the operations manager whereupon “the next line is to me”.

When it was put to the executive chairman that he had sat in on both meetings he replied that there was “a system” and that the supervisor “deals with operations on the floor”.

Asked if he had considered demotion or other sanctions rather than summary dismissal, the executive chairman said that he had done so.

Questioned by the Tribunal as to whether or not the respondent had a disciplinary procedure, the executive chairman replied that the respondent had a practice which all employees knew well although it was “not in writing” and that the supervisor had known that the operations manager was “the next level”.

Asked if people had been dismissed before, the executive chairman said that they had. Asked why, he replied: “Primarily for interference with employees.” He added that there had been “probably six dismissals” over the course of ten years and that only one had been brought to the Tribunal “apart from this one”. Referring to “foul language and threatening behaviour”, the executive chairman

said that “threats of a physical nature is serious misconduct”.

It was put to the executive chairman that it had all happened within three days. He replied that there had been “a previous situation” and that “all of that was a continuation of an attack on” the supervisor (although he agreed that this dated back to September 2005). However, the executive chairman did not disagree when it was put to him that it was fifteen or sixteen days from the first reporting of a final problem to the dismissal.

The executive chairman reiterated to the Tribunal that “the concept of rotating people in jobs was primarily brought in by” the supervisor who “would be wanting to make as nice an environment as she could”. The executive chairman added that they were “all easy jobs”, that there was “nothing difficult” and that previously people had been working on their jobs “for quite a long time”.

Claimant’s Case:

Giving evidence, the claimant said that she was married with four children, that she lived three to four miles from the respondent’s factory and that she had worked for the respondent for about ten years. Nearly all of the respondent’s employees lived locally. The claimant had had no difficulties before, in 2005, her supervisor took redundancy and was replaced by another lady. The claimant was not alone in going to the office about this wanting to know why the previous supervisor had gone but, she told the Tribunal, she “was not the ringleader”. There had been about six people involved. The office was not big. Some of the employees were in the corridor. The claimant told the Tribunal that she “never got a letter of warning in January 2006”.

The claimant told the Tribunal that the lip-balm room had been very hot. There used to be a five-hour shift with one person working in the morning and another in the afternoon. One Friday, the claimant got a notice in her pay-packet that there would be a change from a five-hour shift to a week. It would all be done in artificial light. There was a light flashing on and off for a few weeks. “Small little pots” had to be filled.

On Monday 28 May the claimant went to the lip-balm room and subsequently told the supervisor that she should see to the lighting if an employee was to be there for a week. The following day the light was not fixed. The claimant complained to the supervisor who asked what was the issue with the lighting.

Asked at the Tribunal hearing if she had been aggressive, the claimant replied that she had just said that the supervisor should see to the light if an employee would be there for a week.

Asked if she had spoken to the Latvians, the claimant replied that a Polish girl had asked her about the letter she had received whereupon the claimant had asked the Polish girl if she wanted to ask the supervisor about it.

Asked if she had used bad language to the supervisor that day, the claimant said that she had not and that the supervisor had said that she (the supervisor) would contact the operations manager. On Wednesday the claimant was still working the new rota. She approached the supervisor again about the lights. The supervisor asked what was the issue whereupon the claimant replied that the supervisor “would want to see to it” if an employee was to work a week there. The claimant denied to the Tribunal that she had raised her hand to the supervisor’s face. The supervisor fixed the lights in one room but not in the lip-balm room.

After lunch the supervisor came to the lip-balm room and asked the claimant to the office. The claimant went to the office and was told that this was a disciplinary meeting whereupon the claimant said that she wanted a witness. (She got one for Thursday at 3.00 p.m.)

The claimant was told that she was suspended and to get her things. She got her radio. She was on friendly terms with the other girls. She wanted to tell them what was happening. The executive chairman came running and said that if the claimant did not leave he would call the police. Note: at this point in the hearing the respondent's representative objected that this had not been put to the executive chairman.

The claimant continued her testimony to the Tribunal saying that she would not take a lift when it was offered because she "was not going to take a lift after being sacked". The claimant added that she had not used bad language and that she had been suspended with pay on the Wednesday. Her witness was available on Wednesday 6 June but when she arrived with the witness it was revealed that the executive chairman was not available.

At the Tribunal hearing points from the respondent's meeting agenda were now put to the claimant who denied the allegation that she had enticed an operative away from the tube printer on 29 May. Regarding the allegation that the claimant "undertook a very abusive attack" on the supervisor on 29 May, the claimant told the Tribunal that she "just said she should get the lights changed".

The next allegation from the said agenda to be put to the claimant was that she had refused to attend a disciplinary meeting on 30 May on the grounds that the office might be bugged and that she would not come within an inch of the office with everything that was going on. The claimant told the Tribunal: "I did say it but probably should not have said it."

The claimant was asked to comment on the allegation that she had demanded her suspension on full pay in writing and had then announced to the executive chairman that the letter was not worth the paper upon which it was written. The claimant said to the Tribunal: "I did not demand my suspension in writing."

It was put to the claimant that there had been an allegation that at a disciplinary meeting on Thursday 31 May she had refused to co-operate fully with the management investigation by deliberately withholding information about a male employee which she had intended using later in connection with her case. The claimant replied: "I never mentioned male or female."

It was put to the claimant that she was alleged to have made the following threat to the supervisor before she left the respondent's premises on Wednesday 30 May: "You better watch out for yourself now because you are dealing with the Murphys now (and) not the O'Briens. Watch yourself and remember that you better watch your back." The claimant replied as follows: "I was told I was there to answer questions and not to ask them. The O'Briens were the ones pushed out. I never said you'd better watch your back."

Concluding her testimony to the Tribunal, the claimant said that she had been happy in the respondent's factory. She added that she had sought work after her employment there had ended, that she had gone to FAS and that she had done a course. She said that she would like to get work but that it was all going to younger people. She finished her direct evidence saying that she had no animosity against the supervisor and that it had only been a lighting issue as to when the supervisor would get it fixed.

In cross-examination the claimant was asked if she had animosity towards the supervisor. The claimant replied: "I haven't really." The claimant added that she had said that it had been "a sad day" that the supervisor had come "on the floor" and that thereafter "nothing seemed to have gone right". Telling the Tribunal that she (the claimant) used to work nights, the claimant said that three people had left since the supervisor had been given that position and that one of those three was of similar age to the claimant (the other two being younger). The claimant told the Tribunal: "I did not like to see anyone pushed out." Asked if she (the claimant) had held the supervisor responsible, the claimant replied: "Not really."

It was put to the claimant that on 28 May she had raised the issue of the lights. She replied that she had been on lip-balm for many days and the light had still not been fixed so that only one was working. She added that a week on lip-balm was "a big difference" from the five-hour shift that had previously been the norm. She said: "It was okay for five hours but not if you were filling tiny pots for a week." She added that she would have had no difficulty if the lighting had been fixed but that the supervisor had not got it done.

It was put to the claimant that she had said that she wanted the lighting fixed "now". She replied: "I asked on Monday, Tuesday and Wednesday." Asked if she had been aggressive, she replied: "I might have been a little but I just said she should see to the light."

Asked if she had tried to get other girls involved, the claimant replied: "We asked for a meeting at the copying machine. I did not have to entice anyone because they were already there."

The claimant told the Tribunal that she (the claimant) was the only Irish person "on the floor" and that foreign employees had gone to her when they had a problem. It was put to her that the supervisor had checked with other girls and that they had said that they had no problem. The claimant replied: "Some said yes and others said no."

The claimant told the Tribunal that she never used the word "fuck". It was put to her that the executive chairman and the operations manager also said that the claimant had used it. The claimant replied: "No. I don't use it."

The claimant was asked if she had said: "I'm not effing shouting at you. I'm trying to make you understand." She replied that she had not but that she had asked about the "change" and had said that they (the employees) would stay on lip-balm for a week but would switch between themselves whereupon the supervisor had said that she (the supervisor) would talk to the operations manager about this.

It was put to the claimant that the supervisor's evidence about the Wednesday morning was that she (the supervisor) was almost up against the wall and that the claimant had intimidated her. The claimant replied: "We met in the corridor." When it was put to the claimant that she (the claimant) had been very aggressive she replied: "Not really. I was not wagging my finger at her." When it was put to the claimant that the supervisor's boyfriend had seen the claimant the claimant replied that "the only place" the supervisor's boyfriend could have been was in "the little office" and that she (the claimant) did not believe that the supervisor's boyfriend had been there.

The claimant told the Tribunal that the respondent had given her until 3.00 p.m. to get a witness but that she had wanted an independent witness and that she had said that she wanted a lawyer. She told the respondent that she could not get a witness that day. She was subsequently told that she was

suspended and that she was to go once she had got her things. Asked at the Tribunal hearing if she had then regarded herself as dismissed, she replied that she had not known. When it was put to the claimant that the executive chairman had said that the claimant had said that she had been dismissed the claimant denied this.

The claimant now told the Tribunal that she had been in the canteen when she had received the letter of suspension, that she had never asked for the letter and that she had not known her entitlements. She admitted to the Tribunal that she had said that the letter was not worth the paper on which it was written but explained this by saying that she had been annoyed and she asked the respondent's representative if he would not have been annoyed if he had been suspended.

Asked what she had meant by referring to the O'Briens and the Murphys, the claimant replied: "The O'Briens were pushed out. I did not want to be pushed out." The claimant added that she had not wanted to say her own name and that "it just came out as the Murphys". The claimant told the Tribunal that there was "no way" that she had said "mind your back" to the supervisor and that she did not know why the supervisor would say that the claimant had said that.

When the claimant was asked if she and the supervisor had previously fallen out she said that they had not.

The claimant was asked if she had been saying that the supervisor could not do the job. The claimant replied that three people had been let go since the supervisor had come on the floor and that the supervisor had not got on with some of the girls on the floor.

It was put to the claimant that she would not like someone to say about her that it was "a sorry day" that she had come in. C replied: "Not really."

The claimant was asked if she would have liked it said that she had "a lot to learn". She replied: "No. I was being suspended. Wasn't I?"

Saying that she had had no previous issues with the supervisor, the claimant told the Tribunal: "I did not use bad language. I did not really raise my voice. I had to get a witness and she had to lose a day's pay."

Regarding the 13 June meeting agenda, the various allegations therein were put to the claimant one by one.

Regarding the allegation that the claimant had enticed an operative away from the tube printer on 29 May, the claimant said that the girl had called for a meeting.

Regarding the allegation that the claimant had undertaken a very abusive attack on the supervisor on Tuesday 29 May 2007 and on Wednesday 30 May 2007, the claimant said that she had not been abusive or physical.

Regarding the allegation that she had attempted to incite staff against their wishes to make complaints, the claimant said they had all attended a meeting at the copying machine.

Regarding the allegation that the claimant had spoken about the supervisor in a very derogatory manner to the operations manager twice on Wednesday 30 May, the claimant said that she could not

recall what she had said to the operations manager. When it was put to the claimant at the Tribunal hearing that she had said that it had been “a sorry day” when the supervisor had come onto the floor the claimant replied that she had probably done so if that was what was alleged.

Regarding the allegation that she (the claimant) had spoken about the supervisor in a very derogatory manner to the executive chairman twice on Wednesday 30 May, the claimant acknowledged having done so adding that she thought that the supervisor had had something personal against her. The claimant told the Tribunal that, on one occasion when the supervisor had dumped items in a skip, the supervisor had said that she was a supervisor and could do that. The claimant had thought that she (the claimant) or others could have been blamed for that. The claimant thought that the supervisor had disliked her after that.

Asked if she had thought that non-nationals had been treated better, the claimant said that a lady who had not liked a printing machine had been taken off it and had not been expected to stay on the printer longer than a day.

The claimant admitted having made the comment about a letter from the respondent not being worth the paper on which it was written.

Regarding the allegation that, at a disciplinary meeting on Thursday 31 May, the claimant had refused to co-operate fully with the management investigation by deliberately withholding information about a male employee which she intended using later in her case, the claimant replied that she had not specified as to male or female. The claimant continued: “I was told to answer questions. I said I had a lot to say. I did not say anything about what might come out in the future.”

The claimant said that she had gone to FAS and that she had applied to a named major chainstore. Though she did not drive she had applied to travel on a bus with old people as a bus attendant. She had also applied to a named well-known care organisation for work. She had done a ten-week course but told the Tribunal that there was plenty of work for younger people than her.

In re-examination, the claimant said that she had registered with FAS and that FAS was helping her but that it was very hard to get a job locally. Not being able to drive, she said she was finding it hard to get work.

Asked about the O’Briens, the claimant said that they had come in crying one day and had said that they could not take any more.

Giving evidence, the lady who acted as a witness when the claimant went to meet the respondent said that she was related to the claimant through her husband and that she had attended with the claimant at two meetings. The witness told the Tribunal that when she had attended the meeting at 3.00 p.m. on Thursday (31 May 2007) she “did not hear effing and blinding” but the claimant “did say Jesus a couple of times”.

Regarding the said Thursday meeting, the witness said that when she got there the executive chairman was on his own. The claimant appeared after a while. It was not a very pleasant meeting. The witness told the Tribunal that “it was put in a very accusing manner what was being thrown at” the claimant and that the claimant’s “face was getting red”. The claimant asked the witness if she

was taking notes whereupon the witness did indeed take notes. When the respondent made an allegation about the claimant putting her finger in the supervisor's face the witness asked if the respondent had a witness to support this allegation. The witness was then told that she herself was just there as a witness (rather than as the claimant's representative) whereupon she apologised and said no more.

Regarding the 13 June meeting, the witness said that it had been a short meeting which had been "really just going over earlier stuff" such as the lighting issue. The witness told the Tribunal that no bad language had been used at this meeting.

Under cross-examination, the witness acknowledged that she had no legal training. Asked if the claimant had been agitated, she replied that the claimant had been upset about what was being said to her. The witness said that she did not know the claimant very well but that she would call the claimant's demeanour one of being extremely upset. The witness added that the claimant's voice had been "raised now and then".

The witness told the Tribunal that the respondent had said that pointing in the face of the supervisor had been reported to the gardai. The witness thought that this was the second day i.e. 13 June.

The witness said that there was nothing in her notes about foreign employees being allegedly treated better than the claimant. Asked if there was any reference in her notes to another girl and the printer, the witness told the Tribunal that she had "just noted the important things" but that she had written most of what the executive chairman and the operations manager were saying.

Giving evidence, the claimant's previous supervisor said that she had taken redundancy (after agreeing it through her lawyer) in September 2005, that the claimant had worked with her for seven or eight years and that she had had no difficulty with the claimant.

Determination:

The Tribunal was not very pleased that there was such a conflict of evidence between the parties. Having heard all of the evidence adduced, the Tribunal finds that the claimant made a substantial contribution to her dismissal but the Tribunal did not consider that her behaviour amounted to serious misconduct such as would warrant the dismissal that followed. It was for the respondent to satisfy the Tribunal as to the procedures which culminated in the claimant's dismissal. The Tribunal was not satisfied that this onus was fully discharged.

Therefore, the Tribunal allows the claim under the Unfair Dismissals Acts, 1977 to 2001, and, having heard evidence as to the claimant's financial loss, deems it just and equitable in all the circumstances of the case to award her the sum of €11,000.00 (eleven thousand euro) under the said Unfair Dismissals Acts, 1977 to 2001.

Regarding the claim made under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, the Tribunal finds that this claim fails as the Tribunal was told that the claimant received a

notice payment and this was not disproved at the hearing of the case.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)