

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

MN249/08

Employee

Claimant

Against

Employer

Respondent

Under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Flanagan BL
Members: Mr G McAuliffe
Mr S Mackell

heard this claim at Naas on 18th June 2008.

Representation:

Claimant: Mr Adrian Kane, Branch Secretary, SIPTU,
George's Street, Newbridge, Co. Kildare
Respondent: In person

The decision of the Tribunal was as follows:-

Determination:

The claimant commenced employment on 30th January 2002 and was dismissed on 13th February 2008. Both parties were in agreement that the claimant had been dismissed without notice.

On 16th July 2007 the claimant refused to work after 14.30, a full two hours before normal finishing time. The claimant left the premises and offered no explanation or apology. The claimant was subjected to a disciplinary process as a result of which the claimant was given a final written warning. The respondent had found that the action of the claimant amounted to gross misconduct. The claimant refused to sign the final written warning because it was written in English. The claimant's language was Portuguese. The respondent had an interpreter within the company who was available to translate English to Portuguese.

The respondent stated that the claimant was late for work on 4th February 2008 and that he had offered no explanation. The claimant was two hours late on 6th February 2008. The claimant was then told that he needed to be in on time. He did not report for work on 12th February 2008. On 13th February 2008 the claimant attended a meeting with the General Manager and the claimant was dismissed without notice that afternoon. The respondent contended that the claimant was dismissed for a minor incident of misconduct while he had a live final written warning on his personnel file.

The respondent asserted that the claimant was dismissed for misconduct and therefore was not entitled to minimum notice. The representative for the claimant asserted that the claimant was entitled to minimum notice.

The representative for the claimant stated that the claimant's termination of employment without notice was unfair, as the letter of dismissal was not in Portuguese. The Tribunal finds this argument to be wholly unmeritorious and holds that the failure of an employer to provide a letter of dismissal in a language other than an official language of this state does not of itself make an otherwise fair dismissal into an unfair dismissal. The Tribunal notes that an employee has no right, other than as may be provided in contract, to a letter of dismissal. Of course, a wise employer will set forth the grounds of dismissal in writing as a matter of good practice and in order to minimise the scope for dispute as to the reasons for a dismissal. The representative for the claimant also stated that the claimant's conduct on 16th July 2007 was not an act of gross misconduct. The Tribunal finds that the claimant wilfully absented himself from work without explanation and holds that such behaviour amounts to gross misconduct. In any event, the placing of an employee on a final written warning can be justified as a disciplinary response to minor misconduct. The Tribunal notes that even at the hearing no explanation was forthcoming for the absence.

The Tribunal notes that the claimant had brought a claim for unfair dismissal before the Rights Commissioner and that that claim had been settled.

The Employee Handbook specifies that leaving the premises without permission constitutes gross misconduct. The Tribunal notes that although the 16th July 2007 absence was held to be gross misconduct the respondent did not impose the ultimate penalty of dismissal, but was lenient and instead imposed a final written warning. The Employee Handbook also specifies that poor time-keeping and unreasonable and unexplained absences from work constitute minor misconduct. While on a final written warning the claimant misconducted himself on 4th February 2008 and again on 6th February 2008.

Section 8 of the Minimum Notice and Terms of Employment Acts, 1973 to 2001 permits an employer to not pay minimum notice when an employee is dismissed for misconduct:

“Nothing in this Act shall affect the right of any employer or employee to terminate a contract of employment without notice because of misconduct by the other party”.

The Tribunal is satisfied that the termination of the claimant's employment without notice was not unfair and accordingly dismisses the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)