

Unfair Dismissal and Gross Misconduct*

In case ADJ12837 the AO in this case looked at the issue as to gross misconduct and quoted the Labour Court in the case of Kilsaran Concrete and Vet UD1611. That is a case where the Labour Court referred to a previous EAT case of Lennon v. Breddin where the Labour Court stated,

“Summary Dismissal is the nuclear weapon in the employer’s arsenal of disciplinary sanctions. Section 8 of the Minimum Notice and Terms of Employment Act 1973 saves an employer from liability, (under that Act) for statutory minimum notice where the dismissal is for certain forms of various serious misconduct.”

In the case of Lennon v. Breddin MN160/1978 the EAT in that case had stated,

“We have always held that this exemption applies only to cases of very bad behaviour of such a kind that no reasonable employer could be expected to tolerate the continuance of the relationship for a minute longer; we believe the legislator had in mind such things as violent assault or larceny or behaviour in the same serious category”.

The AO also quoted the case of Kunceviciene and Elder Nursing Home Limited UD97/2015 where it was stated,

“Breaches of any policy vary along a scale of seriousness. It is not reasonable to prescribe the same and ultimate sanction of dismissal for each and every breach irrespective of the nature of the breach. Indeed, the respondent’s action in allowing the claimant to continue on the employment without any sanction or restrictions in her duties for almost three months following the incident is inconsistent with its position that the breach was of such a nature as to constitute gross misconduct and justify dismissal”.

In this case an award of €7500 was made.

****Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.***

*****In contentious cases, a solicitor may not charge fees as a proportion or percentage of any award or settlement.***

