

## **Dismissal for Gross Misconduct\***

This arose in case ADJ-00026969.

The employer in this case relied on a case of Carvil –v- Irish Industrial Bank 1968 IR325. The respondent in this case accepted that it did not adhere to any of the procedures set out in the Code of Practice but submitted that given the magnitude of the misconduct they were entitled to summarily dismiss him without recourse to same.

The Adjudication Officer pointed out that it was not clear that the respondent was entitled to dismiss an employee without reference to the rest of the disciplinary procedure. There is a provision of summary dismissal which provides they may terminate the contract with immediate effect without notice and no liability. The Adjudication Officer pointed out that while the respondent may have been entitled to dismiss without notice once gross misconduct was established, the purpose of an investigation and disciplinary hearing is to lawfully establish that gross misconduct occurred. The Adjudication Officer pointed out in the present case it was apparent that the respondent came to the conclusion without any investigation of the surrounding circumstances or any input of any description from the complainant. The complainant was provided with no opportunity to explain his actions on the morning in question or to put forward any relevant mitigating circumstances. The Adjudication Officer pointed out that such actions are clearly unfair towards a complainant and cannot be said to constitute “reasonable conduct” on the part of the employer.

The Adjudication Officer found that while the complainant’s actions on the morning in question may have constituted some form of lesser misconduct the Adjudication Officer found that no reasonable employer would have determined that the actions in question constituted gross misconduct.

In this the Adjudication Officer referred to the case of Bank of Ireland –v- Reilly 2015 IEHC241 where Mr. Justice Noonan approved the following passage;

*“The correct test is was it reasonable for the employer to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair. But if a reasonable employer might reasonably have dismissed him, then the dismissal was fair. It must be remembered that in all these cases there is a band of reasonableness, within which one*

*employer might reasonably take one view, and another quite reasonably take another”.*

The Adjudication Officer found that no reasonable employer would have dismissed and awarded compensation.

This case is interesting in that it deals with the issue of gross misconduct and the issue of fair procedures.

**\*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 or expenses as a proportion or percentage of any award or settlement.**