

	Complainant	Respondent
Parties	Artur Marecki	Board of Management Scoil Pádraig Naofa
Representatives	Self-represented	Principal and Chair BoM

Complaint:

Act	Complaint/Dispute Reference No.	Date of Receipt
Complaint seeking adjudication by the Workplace Relations Commission under Section 8 of the Unfair Dismissals Act, 1977	CA-00064330-001	26/06/2024

Date of Adjudication Hearing: 24/10/2024 Workplace Relations Commission Adjudication Officer: Gaye Cunningham

Procedure:

In accordance with Section 41 of the Workplace Relations Act, and/or Section 8 of the Unfair Dismissals Acts, 1977 - 2015, following the referral of the complaint to me by the Director General, I inquired into the complaint and gave the parties an opportunity to be heard by me and to present to me any evidence relevant to the complaint. The matter was heard by way of remote hearing pursuant to the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 and S.I. 359/2020, which designated the WRC as a body empowered to hold remote hearings.

Background: The Complainant contends that he was unfairly dismissed following accusations that he falsified his hours.

Summary of Respondent’s Case: The Respondent provided written and oral submissions summarised as follows:

The Principal “J” gave evidence having been appointed in September 1st 1997. (27 years ago).

At that time the school was but a small 3 teacher rural school with less than 50 pupils on roll. However, as the years progressed, the popularity of the school grew and some years ago our pupil enrolment peaked at 300 pupils with a combined staff of 24.

Needless to say, the progress and development of our school brought with it several exciting challenges, including building extensions, car parks, leisure facilities, offices, internal enhancement projects...to name but a few.

In September 2006 we were delighted to appoint a new cleaner / caretaker Mr Artur Marecki on a part time basis.

(It is noted that in his submission to the WRC, Artur queries his job description. While the cleaning of the school was Artur’s primary role, he also carried out small caretaking roles, such as the replacement of bulbs, the fixing of window blinds, the replacement of toilet seats, the feeding of his tropical fish, the oiling of door locks, the putting out of weekly dustbins for collection etc. All major maintenance issues, including the replacement of window glass, the repair of downpipes, the painting of classrooms, the maintenance of school grounds and cutting of lawns etc are carried out by others.

In truth, this was one of the best appointments ever made as Artur was not just a marvellous cleaner / caretaker, but in addition, he was a joy to work with, courteous and helpful to all staff members, enthusiastic, totally respectful to me as Principal, but above all else, a dear friend.

While other local schools struggled to find efficient and courteous cleaners /caretakers, it was with immense pride that I spoke so glowingly of Artur on a regular basis, to staff, parents, family, and friends. In fact, (and particularly when Arthur was in my company), I regularly stated to those in attendance, that never had 2 people such “a wonderful working relationship, never exchanging a cross word in 16 years”.

Our relationship was based on mutual trust and respect.

Each day Artur filled in his working diary, stating his 'start' time and 'finish' time.

While Artur had no fixed hours, opting to attend work at times that suited him best, (weekends included), he did opt to work no more than 21 hours per week at a rate of €13 per hour in order to keep him below a certain tax threshold, given that he was also in full time employment in other employments. Artur's work schedule diary was retained in the staffroom and every Wednesday his number of hours worked were calculated by our school secretary, (nearly always amounting to 21 hours), and Arthur was paid through our Collsoft Pay Roll System / Revenue accordingly. In addition, and in order to give Artur the opportunity to carry out work during the summer months, which would otherwise be quiet, in 2018, and in consultation with Artur, the school purchased an industrial floor cleaner / polisher and when Artur had completed the task of polishing all floors throughout our school, we allowed Artur to "borrow" our machinery and pads free of charge, to carry out private work elsewhere.

The Principal outlined the various supports given to the Complainant during his illness including fundraising and gifts. Several updates on Artur's medical progress and wellbeing were conveyed to parents by note, text and newsletter. However, on Monday June 17th, I arrived at the school at 7pm to finalise end of year school reports. Unusually, Artur was not present. I was eager to meet Artur in order to discuss a list of cleaning duties to be carried out during the Summer holidays. When I checked his diary, it stated that he had arrived at 6pm and finished at 8pm. I was concerned and became suspicious that Artur was falsifying his hours and claiming wages for hours not worked. Coincidentally, on that same evening, I had prearranged to meet the school secretary, "A" in her office to sign off on "end of year" school reports. I mentioned to her that Artur was not on the school premises. It was then that she informed me that she was aware that Artur was falsifying his hours and unfairly claiming for hours worked. She produced her diary and provided the following dates and information.

On April 23rd she arrived at 7pm and though Artur was not present she noted that his diary stated that he was in attendance from 6pm to 9pm. On May 28th A arrived at 7.10pm and again noticed that Artur was not in the school though he had again signed off from 6pm to 9pm. A recalls hoovering her office prior to leaving that evening as it hadn't been done for some time. On May 29th A arrived at 7.15pm again noting that Artur was not in the school though he had signed his diary from 6pm to 9pm. A stated that on each of those dates, while present in the school completing secretarial tasks, that she was aware that Artur was not present. Neither did he return on any of these 3 occasions as A remained in the school until after 9pm. As it is A's role to calculate Artur's weekly hours in order to pay him, she checked his diary and saw that on each occasion Artur had signed in and out though he was actually not in attendance. I called the Chairperson of the BOM Mr O and informed him of my concerns. He suggested that we arrange to meet Arthur the following morning at an agreed time in order to issue Artur with a verbal warning. I wish to stress that it was never our intention to remove Artur from his role, regardless, as we were aware that he had recently come through a very personal traumatic period in his life and we wished to show empathy and understanding. However, this was far too serious an issue to overlook.

On Tuesday June 18th at 8.30am I called Arthur and asked if he could meet with both O and me at a suitable time to discuss concerns we had in relation to the cleaning of the school. We agreed to meet in the staffroom at 10am.

At 10.20am Arthur arrived into the staffroom in haste. He commenced by flinging 2 heavy sets of keys on to the table where we sat, shouting 'Go ahead and fire me'. Both O and I were dumbfounded. Arthur's demeanour, facial expression, aggression and insulting behaviour was simply not acceptable. We had never ever witnessed such disrespectful manners in our school from anyone. Eventually, when we did address his dishonesty in falsifying his hours, Arthur did admit to

doing so on several occasions, excusing his behaviour by stating, 'I did so because you never paid me sufficiently'. However, never once previously had Arthur ever spoken of his dissatisfaction with his wages, terms and conditions. In truth, and no matter how we tried to maintain a civil discussion, Arthur was not willing to engage, preferring to maintain a most aggressive demeanour until eventually O suggested that we postpone the meeting. Arthur left, though he did return wishing to speak with me in private. I refused. I was genuinely upset and I did not wish for any pupils nor staff members to witness such behaviour. Can I also state categorically that Arthur never requested that the school keys be returned to him. They remained on the table where he originally threw them in temper. Arthur left.

Two days later, Thursday, June 20th a meeting of the BOM was convened. Both O and I outlined exactly what had taken place. Each member of the board was appalled. Eventually it was agreed by all members of the board that we would write to Arthur to inform him that his contract was to be terminated with immediate effect on the basis of 'gross misconduct'. The BOM informed Artur by letter, dated June 27th, of its decision. Arthur was also informed that he had 7 days to appeal the decision of the BOM in writing as per the Grievance Procedure as outlined in Artur's contract of employment. No further correspondence was received by the BOM from Artur.

Evidence on affirmation was given by the School Secretary that on 3 separate occasions she was on the premises when the Complainant was not there at around 7pm, having put down his time as having been there from 6pm to 9pm.

Summary of Complainant's Case:

I began working at the school in 2007. Throughout my tenure, I was consistently punctual and dedicated to fulfilling my assigned duties. In addition to my regular responsibilities, I often stepped in during urgent situations. For example, I would raise flags over the weekend, open doors for teachers who had forgotten their keys, and secure the school by cleaning up broken glass when children accidentally broke windows while playing football. Even during holidays or days off, I would check to ensure that everything was locked after meetings or events, demonstrating my commitment to the school's safety. I logged all hours worked at the end of each day in a hardback copybook which was kept in the staffroom. The administration and teachers trusted me deeply. I managed corporate accounts for the school at supply stores, and no one ever questioned my purchases, which I made using my personal car and time. I never sought reimbursement for fuel costs or extra pay for my time. I take great pride in cleanliness. The school was more than just a job for me; maintaining it brought me immense satisfaction. This commitment extended to caring for the school's fish, feeding them and cleaning their aquariums. My motivation stemmed from the praise I received from teachers, the principal, and parents, who recognised my efforts in keeping the school impeccably clean. My positive relationships with teachers, students, and the local community were evident; the principal often expressed gratitude by saying, 'Thank God we have you.' This was not merely work for me; I genuinely enjoyed being there. Over the years, I learned valuable skills such as floor polishing, which saved the school significant funds that would have otherwise been spent on hiring professional services. Each summer, I undertook thorough cleaning of the entire school—washing windows, cleaning gutters, and 2 polishing floors. When I started at the school, my wage was €10 per hour. As the school expanded over time, my pay gradually increased to approximately €13 after 17 years of service. However, when a new secretary began working at the school approximately 5/6 years ago I stopped receiving payslips. In March 2023, I faced a significant health challenge when I was diagnosed with stomach cancer that had metastasized to my liver. During chemotherapy, I was unable to work. The school administration organized two fundraising events to support me during this difficult time and assured me of my return to work. This support reinforced my belief that my relationship with the administration and teachers was genuinely caring. In January 2024, after successfully completing chemotherapy, I returned to work feeling hopeful. However, upon reviewing the work hours log, I discovered that my replacement was being paid €2 more per

hour despite lacking qualifications and contributing to what I perceived as neglect of the school's upkeep. This led me to feel discriminated against. Given that I will be under medical supervision for life, I decided to prioritise my health and resigned from full-time work at Chanelle in favor of part-time employment at another school starting in April 2024. At this new position, I learned that part-time employees are entitled to payments for bank holidays and vacation time. On June 18th, 2024, Principal J called me in for a meeting alongside O (Chairperson BOM) but did not give me any indication as to what the purpose of the meeting was. I was asked to come to the school that morning after 10am. During this meeting, they accused me of leaving work an hour early on the previous day June 17th at 7pm rather than 8pm. I was scheduled to finish at 8pm pm and I left one hour early at 7pm. I was very truthful and admitted that this was the case, I acknowledged that I should not have left one hour early despite all duties being carried and fulfilled. I asked J if there were any complaints about my work, he replied to say that we were not discussing that but he continued to tell me that I had lied and that I had disappointed teachers, children and people from the area. Throughout this conversation, I felt attacked and ganged up on. I asked 'so what do we now?' and replied by asking me to leave the keys on the table. I asked him could I speak to him in private as I felt quite intimidated but he said no. I asked about my years of outstanding holiday pay, bank holidays etc. J said I was only interested in money and called me 'fucking scum' and threw a pen across the room. I left the office and went to the secretary to ask her to send me my payslips. She asked which ones specifically and I said all from the very beginning. I have not received any payslips. J claimed that I was aggressive despite later attempts on his part and O's part to contact me about returning to work. After experiencing such treatment, continuing my employment at the school became untenable for me. The principal's comments about how I had let him down—along with the teachers and children—were particularly hurtful; he referred to me as 'scum' who only thinks about money. I was particularly hurt by this comment considering the countless occasions over the years when I worked outside of my contracted hours for no pay. My hourly wage was also low and increased only very slightly over the years. It was difficult to make ends meet but I was dedicated to the school and to my position. This experience has deeply affected me and has led to a loss of respect and trust in the school administration after 17 years of dedicated service.

In J's response to the WRC, he has stated that I became aggressive and threw the pen. This is totally untrue. I was called to the meeting without any indication of the purpose. I don't carry pens with me, I am a school caretaker not the school administration. J was holding the pen and J threw it. I had initially requested reinstatement to my position but when I read J's false account of what had happened on that day I knew that I could not return. Trust has completely broken down. I feel unable to return to work in an environment where I have been treated with absolute disdain. In order to give you a full account of my commitment and tenure, I sent a data access request by registered post to the school. To date, I have not received any of my personal data as requested. On 25.09.24 I received a letter from O outlining arrears owed to me for the year 23-24 with instructions to sign the document. It outlined back payment for holiday pay, bank holidays etc. for that specific period of time but did not refer to the previous 16 years during which no holiday pay or statutory leave pay was awarded.

Findings and Conclusions: Section 6 (1) of the Unfair Dismissals Acts 1977-2015 states

- *(1) subject to the provisions of this section, the dismissal of an employee shall be deemed, for the purposes of this Act to be an unfair dismissal unless, having regard to all the circumstances, there were substantial grounds justifying the dismissal.*

Section 6 (4) provides:

- *(4) Without prejudice to the generality of subsection (1) of this section, the dismissal of an employee shall be deemed,*

for the purposes of this Act not to be an unfair dismissal, if it results wholly or mainly from one or more of the following:

(b) the conduct of the employee,

In this instant case, the Respondent submits that as the Complainant falsified his hours, he was guilty of gross misconduct and he was dismissed by a decision of the Board of Management at their meeting 2 days after the meeting with the Principal and the Chair of the Board of Management. I note the conflict of evidence in relation to how the meeting on 18th June 2024 progressed. The falsification of hours / record of attendance is quite widely regarded as obtaining wages payment under false pretences and therefore usually regarded as gross misconduct.

In deciding if the dismissal was unfair, it is not for me to establish the guilt or innocence of the Complainant, but rather consider whether the Respondent acted reasonably in the matter of the dismissal.

The Employment Appeals Tribunal held, in *Looney & Co v Looney* UD843/1984 that

"It is not for the Tribunal to establish the guilt or innocence of the Complainant, nor is it for the Tribunal to indicate, or consider whether we, in the employer's position, would have acted as he did in the investigation, or concluded as he did..to do so would substitute our mind and decision for that of the employer...our responsibility is to consider against the facts what a reasonable employer would have done in the same position.."

In *O'Riordan v Great Southern Hotels* UD1469/2003, the EAT set out the appropriate test for determining claims relating to gross misconduct:

*"In cases of gross misconduct, the function of the Tribunal is not to determine the innocence or guilt of the person accused of wrongdoing. The test for the Tribunal in such cases is whether the respondent had a **genuine belief** based on reasonable grounds arising from a **fair investigation** that the employee was guilty of the alleged wrongdoing".*

In assessing the proportionality of the sanction, Noonan J. in *Bank of Ireland v Reilly* IEHC 241 stated:

*"The question.. is whether the decision to dismiss is **within the range of reasonable responses** of a reasonable employer to the conduct concerned".*

In this instant case, I base my findings and conclusions on three key questions

- (1) Did the Respondent have a genuine belief based on reasonable grounds arising from a fair investigation?,
- (2) Was there a fair investigation? and (3) was the penalty proportionate?

BHS v Burchall [1978] IRLR 379 is also one of the key decisions in Unfair Dismissal cases when considering a dismissal arising from misconduct.

In that case, the Employment Appeals Tribunal determined that where misconduct is alleged, an employer has to genuinely believe that the employee is guilty, and has to have reasonable grounds for that belief, which must have been reached following a reasonable investigation. The employer does not have to prove guilt to a criminal standard and does not have to adopt a procedure comparable to a criminal investigation. Further it was not the role of the Tribunal to consider whether the employee was actually guilty of the alleged misconduct when deciding if the dismissal was fair.

In this instant case, I find that the Respondent held a genuine belief from their discussions with the School Secretary that the Complainant falsified his hours. When they moved to discuss the matter with the Complainant the meeting descended into conflict. In retrospect, it would have been better for the Respondent to call the Complainant to a formal meeting allowing him representation to investigate the claims. There therefore could be said there was not a fair investigation. In relation to proportionality, the Board of Management moved to immediately dismiss the Complainant without a formal investigation. The process can therefore be deemed to have been flawed.

I do note however, that the Complainant did not avail of his right to appeal. I also note the Respondent's efforts to

rectify matters in the aftermath.

Considering the circumstances, and especially the lack of a full and fair investigation which would allow the Complainant the right of representation, I find the Complainant was unfairly dismissed.

As the employment relationship has been irretrievably broken down, compensation is the appropriate remedy.

I find the Complainant contributed 100% to the situation and I therefore set the award at nil. Decision:

Section 41 of the Workplace Relations Act 2015 requires that I make a decision in relation to the complaint in accordance with the relevant redress provisions under Schedule 6 of that Act.

Section 8 of the Unfair Dismissals Acts, 1977 – 2015 requires that I make a decision in relation to the unfair dismissal claim consisting of a grant of redress in accordance with section 7 of the 1977 Act.

Based on the evidence and submissions and reasoning above, I have decided that the Complainant was unfairly dismissed, and I award nil compensation.

Dated: 18-12-24 Workplace Relations Commission Adjudication Officer: Gaye Cunningham Key Words:

Unfair dismissal, uphold complaint compensation set at nil.