

**Correcting Order**

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:

CASE NO.

Frank McClintock - *claimant*  
139 Highmoor Road, Cross, Derry, BT47 3HS

UD1614/2010

Against

Health Services Executive (HSE) – *respondent*  
Dr Steeven's Hospital, Dublin 8

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. F. Moloney  
Mr. G. Whyte

heard this claim at Dublin on 21st February 2012  
and 26th April 2012  
and 27th April 2012  
and 25th June 2012  
and 26th June 2012

Representation:

\_\_\_\_\_

Claimant(s): Mr. Alex White SC and Ms. Miriam Reilly BL instructed by Niall Quinn & Co, Solicitors, 5 Bachelors Walk, Ballyshannon, Co Donegal

Respondent(s): Ms. Frances Meenan BL instructed by Mr Barry Walsh, Solicitor, A & L Goodbody Solicitors, IFSC, North Wall Quay, Dublin 1

The determination of the Tribunal was as follows:-

This Order corrects the Original order dated the 9<sup>th</sup> day of October 2012 and should be read in conjunction with that Order.

Ms. Anna Killilea, Employer Advisory Executive, Hse West, 63/64 Adelaide Road, Dublin 2 should not have been listed as a representative of the respondent at the hearing.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Frank McClintock - *claimant*  
139 Highmoor Road, Cross, Derry, BT47 3HS

UD1614/2010

Against

Health Services Executive (HSE) – *respondent*  
Dr Steeven's Hospital, Dublin 8

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. F. Moloney  
Mr. G. Whyte

heard this claim at Dublin on 21st February 2012  
and 26th April 2012  
and 27th April 2012  
and 25th June 2012  
and 26th June 2012

Representation:

\_\_\_\_\_

Claimant(s): Mr. Alex White SC and Ms. Miriam Reilly BL instructed by Niall Quinn & Co, Solicitors, 5 Bachelors Walk, Ballyshannon, Co Donegal

Respondent(s): Ms. Frances Meenan BL instructed by Mr Barry Walsh, Solicitor, A & L Goodbody Solicitors, IFSC, North Wall Quay, Dublin 1  
Ms Anna Killilea, Employer Advisory Executive, Hse West,  
63/64 Adelaide Road, Dublin 2

The determination of the Tribunal was as follows:-

#### Claimant's Case

The claimant told the Tribunal that he was Chief Ambulance Officer (CAO) in the NW Health Board. In August 2005 he was appointed Assistant National Director and was responsible for hospital care for the respondent company. He had eighteen years' experience with another

company prior to taking up his appointment as CAO. He was responsible for finance and HR in 26 counties and 93 ambulance areas with a budget of €148 million.

His initial assignment was based in Naas, Co Kildare. Both he and the Director of the National Hospitals Office (henceforth referred to as the Director), his second line manager, agreed that his base was Buncrana, Co Donegal. This was based on the fact that it would not impact on his ability to do the job. He lived eleven miles from the base. He travelled extensively and was away from home regularly. He made a commitment to be in Naas two days a week.

The Director told the claimant that there was an issue with his travel and subsistence. That Director left the respondent in January 2006. The new Director (JOB) proposed an agreement to him whereby he would transfer his base from Donegal to Naas. He was able to claim for overnight subsistence and hotel accommodation from any base in the country.

In a letter dated the 18<sup>th</sup> August 2005 he was informed that his increment would be accelerated to the top of the scale on the basis that he would not claim travel and subsistence from Donegal to Naas. This never took place. The Director made a verbal proposal and his offer was withdrawn. From September 2007 to February 2008 he received no travel and subsistence despite claims to the Director. That Director left the post and was replaced in January 2008. He asked the new Director if she would sign off on his travel and subsistence. From September 2007 to February 2008 he had amassed €20,000.00 worth of claims and he received the money in March/April 2008. Between 23<sup>rd</sup> April 2008 and December 2009 he was not paid any travel and subsistence for travelling anywhere.

He went to the Rights Commissioner Service in May 2009 to resolve the issue and the outcome was that the dispute was to be resolved between the parties. The matter was resolved on the 2<sup>nd</sup> September 2009 on the basis that he was to identify any travel and subsistence from Naas to the country. This was in excess of €35,000.00.

His post was not a desk job. He had a fuel card in 2006 after he was appointed to the post of Assistant National Director. He used the fuel card sporadically whenever he was not getting any travel and subsistence. He was never queried regarding the fuel card. From 2007 to December 2009 there was a protracted issue about travel and subsistence regarding an amount of €57,000.00 and he was expected to travel and not get reimbursed. He had no choice but to use the fuel card to get to and from work and he used the same filling station. The CAO for the Northwest knew that he had a fuel card. He told him the fuel card was for use to Naas when he was not paid travel and subsistence.

The week of the 9<sup>th</sup> March 2010 he received a call from the Internal Auditor and they agreed to meet on Friday 12<sup>th</sup> March 2010. He was not told what the meeting was about and he presumed it was in relation to the audit. Present at the meeting were the Section Officer of the internal audit unit, the Internal Auditor and the claimant. The Internal Auditor started to interrogate him regarding the fuel card and asked him if he knew the fuel card was a spare one. The claimant responded he did not know. The claimant asked the Internal Auditor if he had spoken to the person who issued the card. The Internal Auditor told him there was CCTV footage of him using the fuel card. At that point the claimant was unsettled by the way the blame was placed on him. The claimant told him that he would have to take advice regarding the questions that were being put to him. The claimant was shocked beyond belief.

He asked the Internal Auditor if the Director knew about it and he was told that this was not

relevant. The Internal Auditor told him it was a very serious issue and he could not understand why the claimant used the fuel card. The Internal Auditor believed that all claims were settled in December 2009. He told JB he used the fuel card to travel to and from Naas. He had on-going claims in December 2009 to 12<sup>th</sup> March 2010 which still had to be paid. He had a claim of €9000.00 which had still to be paid. The fuel card indicated an area in the north west. The claimant asked about CCTV footage and the meeting broke up.

The claimant contended that the meeting was a clandestine draconian meeting. He was not given an agenda. He should have been offered the opportunity for representation and neither was available to him at the time of the meeting. He told them he was disgusted with the way the meeting was conducted. The Internal Auditor told him he was retiring on the 16<sup>th</sup> March 2010 and that he would write a report and send it to the National Director. He told the Internal Auditor he was the holder of a fuel card and the respondent had recommended that he have the card. The claimant had authority to use the fuel card up to a certain level of expenditure. The procedure in place for use of the fuel card was when he obtained fuel at a garage it was recorded by the garage and it was processed for payment. The controller of the audit office approved the payment.

After the meeting he telephoned his line manager and he told him he had a meeting with internal audit regarding a fuel card. He asked his line manager for the meeting. On Monday morning the 15<sup>th</sup> March 2010 he arrived in Dublin early. They made a coffee and chatted about general matters. He then spoke to his line manager regarding the internal audit meeting. His line manager told him that this was gross misconduct and that he was going to have to suspend him with immediate effect or he could resign. He was disappointed and angry as he had called the meeting. There were no notes on record of the meeting.

He asked his line manager what would happen if he resigned and would he be given a reference. His line manager told him that the respondent would not give him a reference. His line manager told him he was calling another meeting in fifteen minutes and that the Assistant National Director of HR Shared Services (HR Manager) would be in attendance by teleconference. The claimant was distraught. He told his line manager that he was going to bring his brother in.

About fifteen to twenty minutes later he signed in again and waited for his line manager. His line manager told him that the HR Manager would not be in attendance and maybe that he was being too hasty. If the claimant resigned he would be leaving the respondent with a clean reference. He was informed that if he paid back money there would be no investigation. A file had been sent to the Gardaí. It was clear to the claimant that this was discussed at a very senior level.

The meeting took ten to fifteen minutes. The claimant gave his line manager a document to bring him up to speed regarding managerial issues. The claimant stated he did nothing wrong and the respondent knew he had a fuel card.

There was a gap of about fifteen minutes between the first and second meeting. The Head of Legal Affairs was also present. He was told if the monies were paid back they could speak on his behalf to the Gardaí and that would be the end of the matter. The claimant's line manager agreed that the claimant would remain in his job and go on annual leave until the end of April. He would get the opportunity to speak to staff about his decision. They would agree a press release and nothing would be said to the press about his resignation. The

contents of thereference would be agreed, no disciplinary action would take place. The claimant was owed forty two days leave and had expenses to be reconciled. The meeting took twenty five minutesmaximum. The Head of the Legal Affairs took notes at the meeting. He thought the implications were enormous for him, he had spent 25 years to get to the top of his career and itwas over in twenty minutes. He did not believe that he would ever get a fair hearing. He decided to resign on the 18<sup>th</sup> March 2010. He was given a choice, it was gross misconduct,immediate suspension or he could resign, it was as clear as that.

He wrote two letters of resignation on the 18<sup>th</sup> March 2010, one of which was confidential. A meeting was arranged for the 25<sup>th</sup> March 2010 in the line manager's office. The claimant received a call from the Internal Auditor who said that his line manager had informed him that the claimant had resigned. The line manager told staff before the claimant had the opportunity to talk to them. He was shocked that staff knew about this. He telephoned his line managerwho told him that he wanted staff to know before any press release issued. He decided to meethis line manager as he wanted a full investigation into why the media were about to find outwhy he resigned. His line manager told him that he would never find the culprit. They agreedon a press statement that would issue. His line manager told him that 'all bets are off' and henever got a copy of the press statement. The claimant wanted his specific skills listed on thereference. His line manager gave his own reference which was a record of the claimant's employment with the respondent. He was paid forty days leave out of forty two.

He endeavoured to obtain alternative employment; he looked for the general manager's job in Scotland. He was asked why he left the respondent and he was informed that there was a lack of candour as to why he did not tell about his resignation. He applied for a position in Wales and he applied for numerous other jobs. He established his own consultancy company and has earned €21,000 to date.

In cross examination the claimant stated that he was responsible for 1,600 employees. He was aware of the Code of Practice regarding Governance of State Bodies. All public bodies were obliged to manage money prudently. As Assistant National Director he was aware of internal audits. He was given a fuel card in early 2006 when he had an ambulance service vehicle. This was renewed annually. There were discussions regarding moving his base to Naas. He received three accredited increments in the job. The Director proposed to him that if he moved his base from to Naas that he would go on the max of the scale.

An issue relating to travel and subsistence was resolved on the 2<sup>nd</sup> December 2009. He did not advise the Director that he had a fuel card as the issue did not come up in conversation. The person who issued the fuel card knew he had it. He was aware that a fuel card was assigned to a particular vehicle. It was a spare card issued by a fleet manager. He used the fuel card for driving around the country. He had a series of credit card bills in December 2009 amounting to €9,000.00. He was paid until August 2009. He used the fuel card to get to work. He had the card since 2009. He did not tell his line manager that he had a fuel card.

At the internal audit meeting he thought he was going to discuss overtime claims. He did not use the fuel card for his own benefit and he never denied he had access to a fuel card. TheInternal Auditor told him €9,300.00 was used up in the fuel card and he asked the Internal Auditor was it directed to him in any way. He continued to use the fuel cards from January2010 to offset his expenses. He was expected to be in Naas twice a week and he did

not claim mileage in 2010.

The first meeting on March 15<sup>th</sup> 2010 took place at 9am and not 10am. The Head of Legal Services only attended the second meeting. He did not accept that this was not a formal disciplinary hearing. At the first meeting he was told it was gross misconduct, he could be suspended immediately or he could resign.

His brother was at the second meeting which took place twenty minutes after the first meeting. It was untrue that he asked his line manager about what the position would be if he resigned. There was no discussion regarding fuel cards at any of the two meetings. He did not offer his resignation at the meeting. He wanted to discuss with his line manager the fuel card and he reiterated that his line manager told him if he did not resign he would be suspended. He was still considering his position and he was told that senior management knew about it. The line manager called the second meeting. The claimant told his line manager he had no time to get a representative. He asked his brother to come with him. They signed in and were met by the Head of Legal Services and his line manager was introduced to the claimant's brother. Serious allegations were put to him regarding missing money. The head of legal services asked him if he had anything to add and she made a comment regarding a reference.

After two meetings he was in no fit state to contemplate anything. He subsequently went to his GP. If he had not decided to resign he would be suspended immediately. He had formed the view that he would not get a fair hearing. On the 16<sup>th</sup> March 2010 he drafted his resignation and on the 18<sup>th</sup> March he proffered his letter of resignation.

He disagreed that the two meetings were held at 10.00am and another at 2.30p.m. He disagreed that the morning meeting was for forty minutes. He did not insist on resigning his post on the 15<sup>th</sup> March 2010. The respondent management team were made aware of what transpired and he had no choice but to resign. He spoke to his own family and spoke to a friend, who was a solicitor, who told him to obtain a reference if he was going to resign. He had two choices either to go a route he had no confidence in or to resign.

He had a meeting with his line manager on the 26<sup>th</sup> March 2010. There was an issue around a press statement to be agreed. In the newspapers on Friday 26 March 2010 it was stated that he had resigned due to misappropriation of fuel cards. After he resigned he obtained legal advice. He spoke to his solicitor in July 2010. He drafted two references and the one that his line manager sent to him bore no relationship to the one he drafted. He disagreed that he applied for a job in February 2010.

He applied for various positions on websites and he believes he is qualified for jobs. He has suffered bouts of anxiety and depression. He was available for work after his resignation.

The claimant's brother gave evidence that he and the claimant travelled to Dublin on the 15<sup>th</sup> March 2010 for a meeting for 9a.m. He remained in the car and the claimant left the car at 8.50 a.m. He was surprised when the claimant returned fifteen to twenty minutes later. The claimant told him that another meeting was arranged and he accompanied the claimant to that meeting. The claimant told him that his line manager had told him he would be disciplined if he did not resign. Two other people were at the meeting; the Head of Legal services and the line manager. The Head of Legal Services took notes.

The claimant's line manager told the claimant if he resigned there would be no need for

an investigation. It was a short meeting. They had a chat about the claimant informing staff and agreed a position regarding the press. The claimant discussed the amount of annual leave he had to take. The claimant offered to pay travel and subsistence outstanding against the fuel card. The meeting took twenty to twenty five minutes, after the meeting the witness and the claimant went home.

In cross examination he stated that he was sure that a meeting did not take place as late as 2.30pm on the afternoon of the 15<sup>th</sup> March 2010. He agreed the claimant sought an agreed reference at the meeting. Resigning was never mentioned. He did not tell the claimant what to do.

### **Respondent's case**

The claimant's line manager gave evidence that he joined the respondent in 2006 as National Director of Estates. His responsibilities subsequently included procurement and ICT. In December 2009 the reconfiguration of hospitals took place and he was responsible for the ambulance service. The claimant worked for him for a three month period. He had no involvement in the claimant's expenses and never signed off on them. He had no involvement with internal audit.

On the 12<sup>th</sup> March 2010 he received a telephone call from the Head of Internal Audit who told him that there was a problem with the internal audit. He also received a call from the claimant. They arranged to meet first thing Monday morning. He spoke to Internal Auditor on Saturday morning who told him that there was an issue regarding a fuel card. On Sunday evening he contacted the Head of Legal Services and asked her if she could be available on Monday in relation to the internal audit which would have to be discussed at the meeting.

On Monday morning, 15<sup>th</sup> March 2010, he met the Head of Internal Audit, and the Head of Legal Services. He contacted the HR Manager who advised him under no circumstances was the meeting with the claimant to be an investigative one, it was a listening exercise. The Head of Legal Services concurred.

He asked his personal assistant to bring the claimant into the meeting at 10.00am. The tone of the conversation was that the claimant was in trouble with the internal audit and that he was ashamed of the outcome. The claimant had let himself and his family down and needed to look at what they could do. The claimant was not told he was going to be dismissed. The claimant raised the issue if he were to resign would there be any investigation. The witness told him there would not be an investigation at that stage. At the end of the discussion the claimant asked him if he resigned would it be on record. The Head of the Legal Services had a copy of the disciplinary process. The claimant felt the best option for him was to resign. A brief discussion took place regarding a reference and the media. He requested the claimant to take time to consider it and he arranged to reconvene in the afternoon.

The claimant returned in the afternoon with his brother. The witness and the head of Legal Services were present. The claimant wanted to resign but the witness told the him that he would not accept his resignation that day. He told the claimant to obtain legal advice. The meeting took thirty to forty minutes.

On the 18<sup>th</sup> March 2010 he met the claimant. The claimant give him a letter of resignation. If the claimant resigned he would do everything he could to assist him. He had no intention of



issuing a press release in the matter. There was no link between the resignation and anything else. If any journalist attempted to link the audit with the claimant he would strenuously deny it. The claimant was upset about the circumstances of his resignation. There was no animosity. It was a business like discussion.

The claimant obtained legal advice. The claimant remained on the pay roll for six to eight weeks until the expiry of his leave. There was no indication from the claimant that he wanted to change his mind. He put in place interim measures to operate the ambulance service.

He was not aware of any internal audits unless he participated in them directly. The claimant was not suspended. The audit in the North West ambulance service was part of the overall 2010 main audit.

He met the claimant again on 25<sup>th</sup> March 2010. The claimant attended with a copy of his annual leave and expenses. He had expenses of over €9,000.00 on his fuel card. The claimant wanted to hold on to his lap top and this was agreed to. The claimant was annoyed. He told the claimant he had no choice as there were media questions all over the place. No formal statement was released by the respondent. A reference issued to the claimant on the 6<sup>th</sup> April 2010 which outlined his work experience. By email dated 13<sup>th</sup> April 2010 the claimant requested that the witness sign the amended reference. By email dated 26<sup>th</sup> April 2010 the witness informed the claimant that he was out of work for two weeks due to the death of his father in law. His personal assistant received an e mail from the claimant on the 9<sup>th</sup> July 2010 regarding a job in Scotland and he wanted to have a reference. The claimant was disgruntled that he did not get the post in Scotland.

In cross examination he stated that he worked in the same building as the Head of Internal Audit who told him that there was an issue regarding an audit. He was not familiar with the process of fuel cards and each health board had different procedures. The findings of the internal audit had no bearing on the disciplinary process. The witness is no longer an employee of the respondent but is a non-executive board member of the respondent.

He was limited regarding the reference he provided for the claimant. He could not provide a reference that was misleading and he felt he could be prosecuted for misleading. HR told him to do what he could in regard to the reference. He disagreed that he expressed the view to the claimant it was gross misconduct. He did not believe he mentioned fraud to the claimant. It was not true that he told the claimant a file was sent to the Gardai and he did not mention anything about the Gardai to the claimant.

There was no one from HR at the meetings. There was no suggestion at the Monday meetings that the claimant could use the card and he was very clear that the claimant admitted he used the card. The claimant did not talk in any great detail about the use of a fuel card. There was a gap of two and a half hours between the first and second meeting on the 18<sup>th</sup> March 2010.

It was made clear that the disciplinary process stood on its own. He did not have a discussion with the claimant regarding what he would say to staff. At the end of April 2010 his main concern was around the media. The claimant had resigned and there was briefing given to the Press Office.

The respondent's representative confirmed that there were no guidelines in relation to the use of fuel cards.

The former Chief Ambulance Officer (CAO) for the North West gave evidence that from December 2004 he was Deputy CAO. The claimant was the CAO for the North West at that time. In the summer of 2005 the claimant was promoted to Assistant National Director. The witness then assumed the position of Acting CAO. He stepped back from that position in May 2006 and RB took over. In October 2007 he returned to the role. He remained in that position until April 2011. He had a good relationship with the claimant while they worked together. He saw him less often when the claimant took the national role.

The witness had no direct involvement with fuel cards, but ultimate responsibility for them lay with him. A fuel card is associated with an ambulance vehicle and not a person, as a number of drivers use the vehicles. The Fleet Manager distributed the cards and received the invoices. The invoices contained the details of where and when the cards were used and also the registration number of the vehicle and the odometer reading at the time of use. The Fleet Manager distributed the itemised parts of the invoices to the ambulance officers to confirm the purchase details. The witness received the summary sheet, without the itemised details, and confirmed the payment based on that. He asked the Fleet Manager on two occasions for a breakdown of costs for the vehicles, but this was not provided. He was not concerned about this. He believed that any concerns would be referred to him.

The witness was aware that the claimant had a fuel card in 2005 while he was driving a company SUV and while he was testing vehicles. The SUV was assigned to a different officer in late 2007. He believed that the claimant would not have had a fuel card after that.

On March 25<sup>th</sup> 2010 the witness was asked to set up a teleconference call at 10.30am for all the CAOs around the country. During the call the claimant's line manager firstly informed the CAOs that the claimant had resigned as Assistant National Director. Secondly he told them that a fuel card audit in the northwest had shown up irregularities and that an investigation was to be carried out. The claimant's line manager asked the CAOs to brief their staff as there was media interest at the time. The witness was asked to remain on the call after the other CAOs had gone.

The claimant's line manager then told the witness about the audit report and instructed him to follow up with the Fleet Manager. The witness knew that the Fleet Manager and the claimant were friends. He later met the Fleet Manager who agreed that he had given the claimant a fuel card. When asked why he responded 'because he's the gaffer'. The witness said that he would discuss the matter more formally at a later time. The Fleet Manager had never told the witness that the claimant had a fuel card. He then briefed his staff and asked them not to gossip about the situation.

He received a phone call from the claimant at around 3pm that day. The claimant sounded fine and said that he was sorry he hadn't had an opportunity to speak to the CAOs before leaving. The witness told him that he was shocked that the claimant had resigned and on foot of a fuel card audit of the northwest. The claimant became annoyed and denied that his resignation had anything to do with it and that anyone who connected the two should be careful. The witness said that was fine if that was the case.

Two weeks later the claimant arranged to meet the witness to hand over keys and a file. The claimant said that he had resigned for his own reasons. He had a timescale in his head of five years during which time he had wanted particular things done and this had not been achieved. He said he had consultation work lined up.

The witness did not seek to have an immediate formal meeting with the Fleet Manager as he suffered two bereavements shortly afterwards. In July 2010 he wrote to the Fleet Manager to seek a meeting. He received a response from the Fleet Manager's trade union representative which stated that they were dealing with the matter on the Fleet Manager's behalf. The witness never received a formal reply from the Fleet Manager or his trade union. The Fleet Manager retired in September 2010 on grounds of ill health.

During cross-examination the witness explained that he knew there were spare cards which were held by the Fleet Manager in case others were damaged or for use while waiting for a new card to be issued. He considered that the cards were still attached to a vehicle and not a person. There were no written procedures, but he considered that the finance regulations applied and that everyone knew that the cards were for diesel for the respondent's vehicles. Card use could not be concealed, but if the vehicle registration was not given when making a purchase the invoice would show a blank for that detail. The time and date would still appear. It would be possible to look further into it, but he had not done this.

The witness recalled a phone call from the claimant at an unknown time when the claimant told him that he was looking for the Fleet Manager as he had a problem with his car. He did not mention a card. He passed on the message to the Fleet Manager.

The audit team carried out their investigation at the Donegal base in January 2010. On the second week the witness was asked to explain the fuel invoice approval system and if there was more of the document available. He told them that the Fleet Officer had the itemised part of the invoice. He was not contacted after that concerning the audit. No one asked him if the claimant was using a card. The first time he knew of the claimant using the fuel card was on the teleconference call on March 25<sup>th</sup> 2010. Fuel cards were renewed annually. The Fleet Manager dealt with it.

The next witness to give evidence was the then Director of the National Hospitals Office. The claimant reported to her. Shortly after she commenced in the role in January 2008 the claimant came to her with an outstanding travel and subsistence claim from the end of 2007. She asked her predecessor about it and he told her that there was an on-going issue regarding the claimant's claims.

The witness went through the claimant's file to ascertain what had been established regarding the claimant's base. During her predecessor's time the claimant's base had changed from Donegal to Naas. The claimant was compensated for this by being put to the top of his increment scale; an increase of three points worth approximately €10,000. This was agreed in July 2006 and implemented in August 2007.

In an effort to progress matters the witness approved the claimant's travel and subsistence claims but removed the claims for overnight stays in Naas, as this was his base.

The claimant filed a claim with the Rights Commissioner Service. A settlement was reached between the parties which the witness considered was a full and final settlement of all claims. The claimant accepted that his base was in Naas. The claimant was paid €27,000.

During this time there was a lot of media interest and Freedom of Information requests about the respondent's procurement of vehicles and equipment. The witness assisted the claimant

with answering these queries and provided him with a HR contact to provide further assistance. She and the claimant agreed that it was in everyone's interest to invite Internal Audit to audit the procurement process in relation to a recent major ambulance fleet order. The witness had moved to a different post by the time the audit was completed.

During cross-examination the witness explained that she did not know that the claimant had a fuel card. She did not have any involvement with fuel cards as no one who reported to her had a respondent owned vehicle and therefore did not have fuel cards.

The Section Officer of the Internal Audit office gave evidence that in early January 2010 the Internal Auditor asked him and a colleague to perform an audit on the ambulance service and transport in the Northwest. He was not requested to look at fuel cards, but as part of the audit they also looked at non-pay issues. Fuel was one of these issues.

The audit took two weeks. During the second week he asked the CAO about the fuel cards. The CAO explained that they were attached to HSE vehicles and that when used at a filling station the registration and odometer reading were to be provided to the retailer. They looked at the invoices from the fuel company. Only the summary sheets were provided, so they looked for the rest of the itemised bill. The Fleet Manager explained that the rest of the itemised bill was sent to the ambulance officers to confirm the purchase, but he provided them with an electronic copy.

There were 63 fuel cards in total. He noticed a gap on the invoice where the registration should have been recorded. This did not overly concern him as they were looking at other things and would be requesting further invoices. When he looked at a further six invoices he noticed that the blank registration sales were mostly at the same filling station. He brought this to the Internal Auditor's attention. He was instructed to visit the filling station that day, January 27<sup>th</sup> 2010, to observe if there was CCTV onsite. He went to the filling station on and confirmed that there was CCTV.

He returned to the filling station the following day with the Internal Auditor. They spoke to the manager who confirmed that the fuel card had been used there. He showed them CCTV footage for dates on which the card was used. CCTV tapes were kept for one month before being erased. The footage showed the claimant using the fuel card and the registration of his car. They got a copy of the footage.

The witness had no more involvement until March 2010 when the Internal Auditor asked him to book a meeting room for Friday March 12<sup>th</sup> at 3pm for a meeting with the claimant. The witness was asked to take notes. The Internal Auditor conducted the interview. He asked the claimant if he had any knowledge of a numbered fuel card and who might be using it. The claimant denied any knowledge of the card. The claimant denied three times that he had a fuel card.

The Internal Auditor told the claimant that the card was mainly used in a particular filling station and that they had visited the station and viewed the CCTV footage. After a few minutes the claimant admitted that he had used the card and that it was unauthorised use. He said that the Fleet Officer had issued the card to him. Approximately €9,700 had been spent since 2007. The claimant said that he was having difficulties claiming travel and subsistence and that he travelled 12,000 miles a year. The claimant wanted to know who knew at a higher level about the meeting and how long the audit was going on.

After the meeting ended the witness was asked to type his notes and send them to the Internal Auditor. He was on holidays after that day and the Internal Auditor retired two weeks later. He heard on his return that the claimant had resigned.

During cross-examination the witness disagreed that Internal Audit had no authority to find someone guilty of misappropriation. The claimant had admitted unauthorised use of the card. The Internal Auditor was obliged to report the matter to the Gardaí. The report was given to senior management and it was up to them to decide if there was a disciplinary issue.

They did not ask any of the senior ambulance officers about the card as 1) they could have been the person using it and 2) they required third party verification. He did not know why the Internal Auditor waited until March 2010 to interview the claimant. Three different cards were used over three years. The cards were re-issued annually.

During re-examination the witness stated that the code of governance gave the internal audit unit unfettered access to all staff during an audit. They received the copied CCTV footage in early March 2010 from filling station.

The then Assistant National Director of HR Shared Services gave evidence that early on Monday March 15<sup>th</sup> 2010 he received a phone call from the claimant's line manager. The line manager explained that the claimant had requested to meet him that morning about the audit report. The line manager requested a teleconference call at 9am with the witness to prepare for the meeting. The witness was unaware of the contents of the report. The line manager told him that use of a fuel card would be in it.

On the teleconference call were the witness, the Head of Legal Services, the Head of Audit Services and the line manager. They discussed the audit report and what to do at the upcoming meeting with the claimant. The witness said that the line manager should have a witness with him. It was not a disciplinary hearing. They did not have a copy of the report yet. The line manager was to listen to the claimant and not to get into a discussion about the claimant resigning or any disciplinary proceedings until they had all the facts. The line manager ended the call as the claimant arrived.

The line manager called the witness at around 11am that morning and told him that the claimant wanted to resign. The witness told the line manager to not let the claimant resign, but to tell him to get legal advice and to take a few days to think about things. The witness clarified for the line manager that if the claimant resigned then no disciplinary proceedings would be recorded on his file as nothing had been instigated, however, it would still have to be reported to the Gardaí. The claimant was meeting his brother and was going to return. The line manager contacted the witness later to say that the claimant was going to take some leave to consider his options.

The witness outlined the normal disciplinary procedure. He was unaware of the claimant making any attempt to retract his resignation. The claimant did not invoke the grievance procedure.

During cross-examination the witness stated that no note was taken at the meetings of March 15<sup>th</sup> 2010. They were not disciplinary meetings. He did not attend the meetings as the line manager was happy to proceed with the Head of Legal Services with him. The claimant did not

resign that day. He understood that the claimant was going to get legal advice after the meetings.

The Head of Legal Services gave evidence. She joined the respondent company at the beginning of March 2010. She received a phone call from the claimant's line manager on Sunday March 14<sup>th</sup> 2010. He told her that the claimant had sought a meeting as he was in some difficulty due to an audit report. She printed off copies of the disciplinary procedure to bring with her in case the claimant wanted to know about the disciplinary steps. The purpose of the meeting was to listen, as per the HR Manager's instruction. The claimant said that he did not require a copy of the disciplinary procedure as he was familiar with it. He was advised to take legal advice, but he said he was already taking advice.

The witness was surprised that the claimant was focussed on what type of reference he could get. They told the claimant that no disciplinary procedure had commenced and so there could be no adverse finding on a reference. She stated that there was a clear distinction between the purpose and use of audit reports and the disciplinary process. Also audit reports are anonymous.

At the second meeting that day the claimant was told to take his time before making any decision as he had substantial annual leave available. The claimant was determined to get a reference and wanted assurances on what it would contain. The situation when the meeting ended was that the claimant was going to take leave and think about the situation.

During cross-examination the witness stated the no notes were taken at the meeting as the meeting was requested by the claimant and was not formal in nature. She denied taking notes at the meetings. She found out two weeks later that the claimant had resigned.

### **Determination:**

The Tribunal in considering the evidence noted the meeting that took place in the Hospital on Friday the 12<sup>th</sup>. day of March 2010 between the Claimant and the auditors. Management of the respondent is entitled to introduce procedures in disciplinary matters. These procedures were in being at the time of this meeting. It is normal for the HR management or line management to implement such procedures. It is also important for Management to ensure that this function is not usurped by other elements of the organisation. The meeting of the 12<sup>th</sup>. of March mentioned above was said to be required by the auditors in their investigation. The Tribunal considered this assertion. The auditors were fully acquainted with all the information necessary for them to compile their report on the fuel card question prior to this meeting, therefore there was no reason for them to have met the claimant on the 12<sup>th</sup>. This meeting and the manner in which it was conducted can be considered in no other way than being part of the disciplinary process. In the circumstances the claimant should have been advised prior to that meeting the reason for the meeting and should have been afforded an opportunity of bringing a representative to that meeting.

On the evidence given to the Tribunal the latter accepts the version of events of the 15<sup>th</sup>. of March as given by the claimant. Had the advice of the HR department been followed the Tribunal is certain that the meeting of the 12<sup>th</sup>. of March would not have taken place and the other events occurring on the following Monday would have been avoided. In view of the above actions by the employer the Claimant was given little choice other than to resign. The Tribunal determines that this termination was caused by the actions of the employer in failing to

apply the agreed procedures and thus constitutes an Unfair Dismissal.

In considering the remedies under the Acts the Tribunal looked at the reasons for the actions of the employer that gave rise to the Dismissal. It was very clear from the evidence given to the Tribunal that the Claimant had used his position to obtain the fuel card from the person in charge of those cards. This person was in a subordinate position to the Claimant and would have had difficulty in refusing such a card to the latter. The Tribunal also accepts that the Claimant knew or ought to have known that he was not entitled to use this card for his own vehicle. Even if he was justified in using the card this justification would have ceased when the agreement was made on his expenses in December 2009. It was reasonable also that he would have mentioned his use of this card to management during the negotiations that led up to that agreement. In the circumstances the Tribunal deem that the most appropriate remedy would have been compensation but due to the facts outlined above it will make no award of compensation in this case.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)