

Judge Dismisses Case Against Retailer

In Ballina Court today, 24 of July 2007, the HSE and Office of Tobacco Control told the Court that they did not intend to appeal Judge Devins written Judgment.

- The Judgment delivered by District Court Judge, Mary Devins related to charges of selling tobacco to a person under the age of 18, contrary to Tobacco Acts. They were brought against Foxford, Co. Mayo supermarket owner Mr. J.J. O'Hara. All charges were dismissed.
- Judge Devins stated that the defence, as provided for by statute, that the person had taken all reasonable steps to prevent a sale to an under 18 had been successful.
- Details of very robust and extensive training programmes by Mr. O'Hara were given in evidence, as were details of staff being made aware of sanctions, including summary dismissal from their employment.
- The judge states that the employee (who was not prosecuted) was “negligent and failing in her statutory duties”, and that her actions were a “direct and flagrant flouting of her employer’s training and instructions”.
- She was “not acting as his agent”, and her actions could not be interpreted so as to impute her actions to her employer.
- The Defence had argued that the strict system of training, and the fact that all employees were aware that the company policy of automatic dismissal were the maximum possible safeguard open to the proprietor. These safeguards were the “reasonable steps” envisaged by the legislators, and the proprietor should not be punished for the errant actions of an employee acting in defiance of explicit lawful instructions.
- In another of finding by the judge in the prosecution, the Health Executive (West) were criticised for not having followed the Office of Tobacco Control Protocols. She states that not adhering to the procedures outlined in the joint HSE/OCT Protocols causes prosecutions in the circumstances before her to be “tantamount to taint of process in a criminal prosecution”.
- In the case before Judge Devins, the offence alleged to have occurred was the first complaint against the proprietor, the HSE had no cause to visit the premises based upon lack of efforts or co-operation from the shop owner, nor had they intelligence that may have led them to believe that cigarettes were being purchased in Mr. O'Hara's premises by minors. The HSE had admitted in evidence that they had neither drawn up a “target list” of suspected offenders, nor collated a database of retail outlets, as directed by the Protocols.

Commenting upon the judgment, Vincent Jennings, Chief Executive Officer of the Convenience Stores and Newsagents Association, the representative body for over

1,500 stores in Ireland said, “We are delighted that the judge has seen the distinction between the actions of an employee and their employer.”

“We are calling upon the Departments of both Health and Justice to immediately make available legislation that makes the provision of age-related cards at point of purchase for all age controlled products mandatory upon the prospective purchaser. In a marketplace that places heavy emphasis upon speed of service, it is unfair to staff and their employees to place all responsibility upon the servers, making instant decision upon eligibility (or otherwise) based upon subjective reasoning. The CSNA, and their members (of which Mr. O’Hara is one) will never condone the sale of any age-controlled product to minors, yet it is unhappy that to date, the Government Departments, the HSE’s and the Office of Tobacco Control see the only way to control tobacco to minors is through prosecution.

For the parties to be successful in their objectives, it is of vital importance that we act uniformly. This can only be achieved if retailers and their staff are provided with laws under which all age-controlled products are available only by way of mandatory production at point-of-purchase of a universally acceptable age card.