

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
Employee

CASE NO.  
UD1183/2005  
RP551/2005  
MN893/2005  
WT404/2005

against

Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**  
**REDUNDANCY PAYMENTS ACTS, 1967 TO 2003**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**  
**ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. J. Sheedy

Members: Mr. P. O'Leary  
Mr. D. McEvoy

heard these claims in Cork on 11 October 2006, 22 January 2007 and 26 January 2007

Representation:

Claimant(s) : Mr. David Browne, McNulty Boylan & Partners, Solicitors,  
26/28 South Terrace, Cork

Respondent(s) : Mr. Eamon Harrington and Mr. Diarmuid Cunningham,  
Conway, Kelleher, Tobin & Comyn, Solicitors,  
29 South Mall, Cork

The determination of the Tribunal was as follows:-

At the outset the claims made under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and Redundancy Payments Acts, 1967 to 2003, were withdrawn.

### **Respondent's case:**

The first witness was one of two directors of the company. He told the Tribunal that the claimant had been employed as a receptionist. The respondent had taken over the company in September 2004. Difficulties arose with the claimant in November 2004 when she requested leave. She had used her allocation for the year but insisted on taking more. After a confrontational discussion, she was granted leave without pay and given a verbal warning. In March 2004, the claimant was given another verbal warning regarding procedures for processing the petty cash. While there was no issue of trust, the maintenance of the cashbook was crucial.

On May 18<sup>th</sup>, discussions were held with the claimant regarding time off and pay rates. The claimant felt that she should have been equated to another colleague who was a medical secretary in the company. On the 19<sup>th</sup>, she telephoned the office to say that she was taking an extra hour for lunch. When the witness approached her about it the next day, she adopted an aggressive attitude at the front desk. The witness had no choice but to issue her with notice with immediate effect. He brought her into a separate room and explained all of the reasons and she was dismissed with immediate effect. She told him that she was handing in her notice the following Monday anyway. The witness sent her a letter outlining the reasons for her dismissal.

Under cross-examination, the witness told the Tribunal that the claimant had notified the respondent of discrepancies in the cashbook in August 2004. An employee gave notice when the matter was investigated. The claimant was instrumental in the discovery. The company was flexible when it came to granting leave but the claimant would take leave without adequate notice to arrange cover for her position at the front desk. She had been addressed on this issue and promised to alter her approach. The warning she received in November was in relation to this matter and also related to her manner and attitude. The other director had warned her that her job was on the line if her behaviour continued.

The colleague that the claimant wanted to equate to in terms of pay carried out extra duties to the claimant as she was a medical secretary. The witness was not aware of how the claimant was aware of the differences in salary between the two as these details were kept in a locked cabinet. It was privileged information. She was dismissed mainly because of her attitude at the meeting. The witness believed that the claimant engineered her own dismissal.

Giving evidence, the respondent's second director (hereafter referred to as S) said that she and the other director (hereafter referred to as P), having worked for a doctor in the Victoria Hospital, bought out his practice in September 2004. There were ten to twelve employees. P and S provided contracts to them all and put in computers as well as other equipment.

An employment contract was shown to the Tribunal. There were twenty days of holidays per year. Overtime worked would be taken within two to three months. No unpaid leave was allowed. Five of the twenty days were to be kept for Christmas.

Although by September 2004 the claimant (hereafter referred to as C) had taken eighteen days off, she intended to go away that Christmas. Trying to be reasonable, S let C take unpaid leave. S suggested to C that part-time work might be more suitable for her if she wanted to take more time off. C had been full-time when P and S took over. Since April 2004 C had been permanent. C had previously been part-time.

The working year was January to December. C was to be back from leave by 10 January 2005. She came back a day late on 11 January.

The Tribunal was furnished with a copy of a written record by P (dated 14 December 2004) which stated that S had on that day issued a verbal warning to C. According to the said record this warning related to "the poor work performance, poor attitude and lack of teamwork displayed... in the preceding (sic) weeks" by C. The record went on to state that it was "stressed" to C "that if such unhelpful and antagonistic behaviour were to continue, she would be subject to two written warnings, whereupon dismissal may occur". The record concluded by stating that C "made an undertaking to improve both her work and her attitude".

S told the Tribunal that C had taken time off without notice to get her hair done and to go to the dentist. S told C that she had already been assigned unpaid leave and that she would be docked pay. C took the time anyway

Asked at the Tribunal hearing why this time off had been a problem, S replied that she and P had got no notice, that there had been a conversation about time off in general and that they could not put on cover for all the time C wanted. Hair and the dentist were routine appointments. C was the main receptionist. She registered patients and was the first to meet them. C did invoices and took cash. S found out by accident about C getting her hair done. As for the dentist S found out that morning or that day. There had not been enough time to get cover.

S stated to the Tribunal that by May 2005 C had taken 12.5 days of holidays (or 17.5 including days taken around Christmas). In March C had taken the week up to and including Good Friday. This was regarded as five days off.

C subsequently sought two weeks off to go to Italy in June or July of 2005. S said no because C did not have enough annual leave left for this. C could go for about three days but no more. S had told C in December that there would be no more unpaid leave. The company did not have the staff. C would not accept what S was saying. She "did not want to know". The atmosphere was very bad. C told a member of staff that she would take the holidays anyway. That would leave reception unattended. The company had got much busier since P and S had taken over the business.

C would deal with patients as they came in. She would take bookings and was responsible for cash. It was payable on the day. Invoices were not issued. The cashbook was getting harder to do. Many mistakes were being made. C was being spoken to. In March S got a phonecall from a cleaner who had found money on the floor one evening. S told her to put it in the safe. This cheque had not been noticed. The cash had been done. This highlighted the difficulties. It was carelessness. S spoke to P who spoke to C.

The Tribunal was furnished with a copy of a written record by P (dated 11 March 2005) which stated that P had issued a verbal warning to C due to "a clear lack of scrutiny in relation to the cash records that were in the care of" C and stated that it had been "stressed" to C "that correct and careful monitoring of the cash receipts was an important part of the business and errors lead to major problems". The record concluded by stating that C "made an undertaking to improve her monitoring of the cash book".

S elaborated on the importance of accurate cash records as follows. Tenders were being done. Tenders required a tax clearance certificate. A revenue audit could cause a problem for tax clearance. Many patients claimed money back from VHI. No-one would take kindly to getting a second or third invoice. Asked if the situation had improved, S said that the cashbook had to be gone through.

S told the Tribunal that C's reaction to not getting holidays was poor. S was unhappy with C's performance. C had an issue with staffing and salaries. S felt it inappropriate that C should question another person's salary. This "kept coming up". It was not C's business. C's general attitude to staff and patients was discussed.

The company was considering rotating secretaries through Shanakiel Hospital to cover holidays. The employment contract mentioned Shanakiel and referred to the possibility of working at

different locations. The company's previous principal had operated more than one venue. S told P of a particularly confrontational conversation involving C. S and P were considering giving C a written warning.

C took some more time off without telling P or S. P spoke to C. The dismissal followed. P and S had decided to give a written warning. C was not listening to them. Patients were in the waiting room. It was unacceptable. C's mood could be fine some days but the noise level had increased. It was unprofessional. Staff saw this and said so. After holiday talks C would be in bad form with patients. It was not desired that practitioners would notice C's moods when they made appointments.

After C's dismissal the company got a reference request from the HSE. It was very specific. The company sought clarification but heard no more. C never asked P or S for a reference.

Giving evidence, the respondent company's office manager (hereafter referred to as H) said that she had been C's direct line manager. The company had red cashbooks. Cash was placed in an envelope at the end of the day. Before 11 March 2005 (the date of a verbal warning to C about cash records) there had been discrepancies. Names might be double-entered. Figures did not tally. Cash and cheque columns might not tally. H would go through the names on the computer and tally them with the cashbook. She would find double entries. This happened a lot. She would tell C. She would show C where the error was. It kept happening. H told S. After 11 March 2005 there were no more mistakes that H could recall. H kept a close eye and made sure that every name in the cashbook went on the computer.

Giving evidence, a respondent witness (hereafter referred to as L) said that she worked as a radiographer for the respondent company and was about twelve years in the same employment. A patient would come in and see the receptionist who would take the patient's doctor's letter. The patient would then be seen by a radiographer at the appointed time.

Once, L had had to deal with a patient whom C had booked in without asking L. L had had to do it. The patient was cross. L later went to C and asked C not to do that again. C got irate. It happened again more than once. L went to S. L did not want to be responsible for patients getting angry. Several patients complained.

There was another complaint which came from a patient who could not understand why there was so much noise coming from reception while she was waiting to be x-rayed.

Giving evidence, a respondent witness (hereafter referred to as T) said that she was a receptionist and had started with the respondent company in 2004. T told the Tribunal that, after C had been spoken to about her holidays, C had said that she would take the holidays anyway.

T had only just started with the respondent when C asked her what her salary was. C said that she hoped that she would not be in trouble about making a phonecall. It could have been about salary.

T told the Tribunal that C had been very cross one day and that C had been saying to a patient:

“They’d expect you to work for nothing here.” T was horrified.

Giving evidence, a respondent witness (hereafter referred to as G) said that she was a medical secretary for the respondent company. Asked what she had known in February or March of 2005 about C going to India, G said that C had been in contact with a foundation for which C intended to go to India. Asked if C had committed to going, G replied: “Committed would be a strong word. It was not generally discussed.” G was asked if this had been a secret between her and C. G said yes. Asked why this had been a secret, G said that she did not know.

G told the Tribunal that later on before C’s dismissal what was said was that C was going and was going to leave them in the “lurch”. G stated to the Tribunal that this put it in a “nutshell”.

G stated that personnel files were kept in a small cabinet in the bone density room. In the time before P and S took over G had not known where they were kept. It was true that they had been under lock and key after the takeover. On a particular day the filing cabinet was unlocked and G did open it. She knew that she should not have done it. Asked if she had given details to C, G said yes and that the issue of salaries had been “an ongoing bone of contention”. C had known T’s salary before that. C had known from early on. It was “a big bone of contention in the place”.

### **Claimant’s Case**

Giving evidence, the claimant (previously and hereafter referred to as C) said that she had started her employment in May 2003. (This was prior to when P and S took over.) C had got on very well with her then employer. She was a receptionist but did some typing also. Many employees there were part-time. C had been part-time but became fulltime. Her employer retired around the end of August 2004. P and S bought out the premises and took over. The Tribunal was furnished with a copy of a reference regarding C from the employer who had preceded P and S. There were many changes when P and S took over. Contracts were drawn up and C’s working hours changed slightly.

Asked at the Tribunal hearing about cash difficulties, C reiterated that she had started in 2003 and said that there had been a problem with cash. Money had gone missing. Subsequently, after a lady complained C checked the cashbook and saw no record of an entry for the said lady. C told S and H (the abovementioned office manager). Because of this the thief was caught and C was thanked.

C told the Tribunal that her love of foreign holidays had been “a bit of a joke” among the staff. When P and S took over she was told that that was the end of that but she was told that there was no problem working up days.

C had a holiday in Sri Lanka. She was told that if she wanted leave after the tsunami she could take it. She said that she would prefer to work. She and her daughter had had to go to counselling about what had happened.

Regarding Italy, C had initially wanted a week and not two weeks. C approached H. It was to H (and not to T) that C had said that she would take the holiday anyway. C was even turned down for a long weekend. C’s daughter had wanted to get something in Milan for her “debs”. S had said that C could always take her daughter to Dublin. C “abided” by the prohibition. There was no further

argument.

Asked about a 14 December 2004 meeting (at which she was alleged to have received a verbal warning) C said that she did not recall it but did recall getting a verbal warning from S in March about her holidays.

C had been sick and needed dental treatment. This was in 2004. S said that she had fallen off a horse and got her teeth done. S told C to go to the dentist to whom she (C) was used to going.

C gave a week's notice about the hair appointment. S got quite irate and said that she would have to call in another employee (hereafter referred to as G). C left about one-and-a-half hours early. S said that C would have to take future appointments from her annual leave. C felt there were different rules for different people. She and T were fulltime. Others could get off easier "without the Spanish Inquisition".

Asked about a cash incident, C referred to the Friday after a St. Patrick's Day and said that she was asked what was her total for that particular day. C replied that she was not sure. P (the abovementioned director) was "visibly shaking with temper". He said that a cheque had been found on the floor a few days earlier by a cleaner. C apologised and said that she did not know how this had happened. P said that he thought that C should know the significance of this. He was not accusing her of stealing or of dishonesty. C was not aware of what documents were going on her file. She did not know what a warning meant. She told the Tribunal that she "felt that this was just to pull my socks up". She added: "I was not told my job was on the line." S told her about the warnings she could get. One was verbal and one was in writing.

At the Tribunal hearing C was then asked if she had been called to account between then and May about cash issues. C replied that another column was added to the book about visas for going to Australia. People would pay eighty euro. She did not think she had made allowance for that. P and S thought they were down money. The company lost no revenue.

C told the Tribunal that she was initially hired to cover maternity leave for H. C took over shopping and things that she did in her own time. H was doing shopping in an hour out of company time.

When P and S took over, lunchbreaks were rostered. C had 12.30 p.m. to 1.30 p.m.. C had waited months for an appointment about buying a kitchen. Her appointment had run an hour over time. C had said it generally in the office that she had an appointment to get plans drawn up for her kitchen. She thought she would get back within the hour. S had said that C had left at 12.20 p.m.. It was actually 12.30 p.m. when C left. C's husband had rung her to hurry her. She was late getting back. She rang G (an abovementioned respondent employee) on G's mobile and said that she was very sorry. G said that C was all right because G and T were there. It was Thursday 19 May 2005. C came in at 2.30 p.m..

About fifteen minutes later P approached C and said that she had been late back. C said that she was very sorry, that she owed an hour and that she would work it up. P said that it was fine as long as the company was aware of what was going on. When she came back P had asked where she was but T and G were on the desk. C told the Tribunal: "I felt I'd accounted for myself. Done and dusted. Over and out." Asked at the Tribunal hearing if this had been a difficult meeting with P, C replied: "No. There were no raised voices. It was not even a meeting. I was at my desk."

On the following Friday morning S asked C why she had not contacted her or P or H. Addressing

this point, C told the Tribunal that H was working part-time and that S alternated between the respondent's South Terrace premises and Shanakiel. C stated to the Tribunal that it been a case of circumstances beyond her control and that her husband could bear witness to the state that she had been in when going back to the office.

This was only days after a general discussion about timekeeping. C had come back from a long weekend away. She got back from Nice on the Sunday and went to work on Monday. H told her that staff would rotate to Shanakiel to cover for someone (hereafter referred to as L) who was working there. All of the staff needed to be trained in for Shanakiel. C said to L that this was not convenient for C. C did not refuse to go but asked if T and G could go because T and G had transport. C thought that T was to go up to Shanakiel.

C asked S to discuss Shanakiel. S said that there was no room for discussion. C said that she wanted to discuss it. This was Tuesday 17 May. S said that C had no computer skills. C had an honours degree. She defended herself. This was in the front office. The appointments book was on the counter. C asked, if she (C) lacked qualifications, who had run the front office. C asked if S thought that a monkey had been working there. S was very aggressive. The more S's voice went up, the more C's voice went down.

C stated to the Tribunal that S then "lost it" and slammed the door. C told her husband about this. He told her that S wanted C to tell S where to "shove" her job.

C told the Tribunal that, in her conversation with S, money had also been mentioned. This was "harping back to the old issue" about the difference between C's salary and that of T. S said that it was none of C's business. C replied that she had been there far longer than T and that she worked longer hours than T. Others there had higher salaries than C but C had a grievance about T's salary because of C's longer service and longer hours.

Asked at the Tribunal hearing how she had known about T's salary, C said that she had twice been accused by S of snooping in the personnel files but that she (C) had said that the information had come to her from another source and that she was not about to reveal that source.

Regarding the source, C now told the Tribunal that G (an abovementioned colleague) had told C in March and that G had told C that she (G) had been a "cailin an-dana". Although the personnel information was normally "like Fort Knox" the key had been left there and G, after she "had taken a peek", had been extremely annoyed and had twice approached S about salary.

Both S and P told C that it was none of C's business but that T had been first hired for Shanakiel and hence had been on an elevated salary. Then when it was realised that T would not go she had dropped her salary.

A week after T had started, C had asked her what salary she was earning. C told T what she was earning. T said she was earning €28,000.00 per annum. C was earning €27,300.00 per annum. C was quite hurt.

C told the Tribunal that it was as if one was "rocking the boat" if one asked questions, that she thought that this was why she was dismissed and that, before this hearing day, she had not been told that accessing personal details was a reason for her dismissal. On the day C was dismissed S said that she hoped that C had not been snooping. C had said that she had had another source. C had no grievance with T. T was "just a pawn in this". T could stand up for herself. C stood up for herself.

C thought that she “had said it in a quiet manner”.

Commenting on the warnings she was said to have received and what they meant, C said that “it was very informal in there”. C was told that T’s salary had been dropped because she was not going to Shanakiel. C “only half-believed that”. C was accused of using tactics towards T which could be construed as bullying. C asked S if S was calling her a bully. S said: “What do you think?” H had been made office supervisor. Neither H nor T had ever approached C about bullying. When C told T about this, T was appalled.

There had not been a formal meeting. All had taken place at the desk. On Friday 20 May 2005 S came from Shanakiel at 11.00 a.m. or 11.30 a.m.. C and S did not greet each other. C could see that S was angry. At 12.55 p.m. a meeting started. It went on for nearly an hour. C had no advance warning. C recalled P’s wife coming in with a baby. T went to look after the baby. S called T to the ultrasound room. C “put two and two together”.

At the Tribunal hearing it was put to C that the purpose of the meeting had been to give C a written warning. C said that she had not received one. Resuming her evidence to the Tribunal about the meeting of 20 May C said that when T was sent to the back office P said that C had had a late that week. C acknowledged this. P asked why she had not rung. C said that she had rung twice. P asked C why she had not rung him, S or H. C said that she had not known if S would be there, that H was part-time and that she had not thought it mattered whom she rang. She did not deny having been late.

C then said to P that she was sorry but that he had asked her about this the previous day, that she had told him why she had been late, that she had apologised and that, as far as she was concerned, it was “done and dusted”. She asked why he was raising it now. He smiled and said: “Because I choose to.” He added that there had been people about. C said: “Do you mean witnesses?”

C told the Tribunal that P “was going over the same old ground”. She asked him how many times she had been late. He said: “None that I’m aware of.” She asked again. He gave the same answer. Then he added that he would have thought, in light of what had occurred between C and S, that C would have been more vigilant. C asked P what bearing did what had happened between herself and S have on her being back late from lunch.

It got heated at that point. C felt that P was “needling” her. She said that she had “had it up to here with this”. She was irritated. P said that it sounded like she had a lot on her mind and needed to get it off her chest and so C did so. She still did not know that this could lead to her dismissal.

When C said, at the 12.55 p.m. meeting, that they were all there for the money S said: “Oh, for f\*\*\*’s sake!” It was heated. P and S were very annoyed. C started to get annoyed. C told the Tribunal: “One of them would nip at my heels and then the other would do it.” C was getting weary. They were wearing down her resistance. S said that she thought all had been resolved. C had spoken, at the front desk, about the money and P had said that it was none of C’s business what they paid their staff. P and S spoke about respect. C said that they did not respect her. When P told her that she was dismissed with immediate effect C was “gobsmacked”. S said that she (C) had been given every opportunity.

C was “annoyed, hurt and humiliated”. She went to get her coat and bag. T said that she would send on the rest of C’s things. T was “tut,tutting”. C wondered how T knew. P came out about three minutes later and said he wanted the key. C gave it. C said that she had intended leaving the



following month anyway. Asked at the Tribunal hearing if she had indeed intended to leave, C said that she had not.

S came out. C said that she would be needing a reference. S said: "No problem." C said: "A written one." S said that she did not know there was another kind. C said: "A verbal one." S said that she had not known. C said: "There you are, Sandy! You learn something new every day!"

C told the Tribunal that she had been passionate but that she had been fighting for her job and that they had been levelling accusations at her. It had been "like a triangle: two against one."

C had made a point about H going off on company time, that time was money and that in C's own time C had bought in groceries while H got company time to do the same thing. Neither S nor P replied. There was no more discussion. C told the Tribunal that she "showed no contrition or tears" but that she "was very, very upset".

At the Tribunal hearing C was asked about the making of appointments for patients to see a radiographer. C replied that, since P and S had taken over, they "needed to keep the chiropractors sweet". They had to "fit in" as many appointments as they could.

It was put to C that it had been alleged that she had caused difficulty for users of the respondent's service. C replied that she, H, T and G had taken appointments. Asked if L (the abovementioned radiographer) had had problems with other staff, C replied that L had had "a very irritating habit" of being on personal phonecalls in the bone density room.

C gave evidence of her attempts to find new employment up to October 2005 when she took a position until March 2006. She concluded her evidence by giving details of her earnings subsequent to the said position.

### **Determination:**

Having considered the evidence adduced, the Tribunal is unanimous in finding that the claimant's dismissal was procedurally unfair but that the claimant contributed substantially to the dismissal. Having considered the nature of the contribution and the extent to which the claimant attempted to mitigate her loss by finding new employment, the Tribunal, in allowing the claim under the Unfair Dismissals Acts, 1977 to 2001, is unanimous in deeming it just and equitable to award the claimant compensation in the amount of €2,000.00 (two thousand euro) under the said legislation.

The claims lodged under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, under the Organisation of Working Time Act, 1997, and under the Redundancy Payments Acts, 1967 to 2003, are all dismissed as the Tribunal did not find that the respondent company had been in breach of any of the said statutes.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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