

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:

CASE NO.

Employee

UD1118/2005  
MN851/2005

against

Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony BL

Members: Mr. T. O'Donnell  
Mr. K. O'Connor

heard these claims in Cork on 15 September 2006 and 5 December 2006

Representation:  
\_\_\_\_\_

Claimant(s) :

Mr. Donal Ryan BL instructed by  
David J. O'Meara & Sons, Solicitors,  
Bank Place, Mallow, Co. Cork

Respondent(s) :

Mr. Brian O'Callaghan, Michael J. O'Callaghan & Son,  
Solicitors, Mitchelstown, Co. Cork

The determination of the Tribunal was as follows:-

**Respondent's Case**

The respondent was the principal in a veterinary practice. He employed two assistant veterinary surgeons in the practice. He employed the claimant on a full-time basis in January 1999. Prior to this she had worked on a casual basis with the respondent during her time in secondary school and during her college holidays as well as doing a week's work experience in the practice in early 1998, during which she assisted with testing and as a result of which she was offered and accepted evening work for the six months prior to her commencement on a full-time basis. Her hours were 9.30 a.m. to 5.30 p.m. or 6.00 p.m. She would sometimes stay an extra half-hour if

needed.

The respondent was not in the office much. He did four hours work in the factory in Mitchelstown every day and did calls in the afternoon. The running of the office was left to AC and the claimant. Some days he would be in just for five minutes to sign cheques. He was aware that some dog grooming was "going on" but he did not think too much about it. The claimant was the main contact with the public and one of her duties was answering the telephone. Clients complained to him that they could not get through to the office. Often, when the respondent rang the office the phone would ring out or AC would answer it, although this was not one of her main duties. He thought the claimant was busy doing secretarial work. He had been aware that work such as typing or posting that he had wanted done had not been done. Reports on cattle testing were delayed and clients were complaining about delays in getting their TB cards. As well as receiving complaints from the public he also received complaints from all those working in the practice as well as his wife. He outlined these complaints to the Tribunal and it was confirmed in the evidence of the various witnesses.

AC who worked in the office, mostly on accounts, and who was senior to the claimant in that she had longer service, was the first member of staff to make complaints to the respondent about the claimant. She told the Tribunal that reports were not being sent to the Department of Agriculture as promptly as they should but the claimant was telling clients otherwise even though the reports would be sitting on her desk. It was she and not the claimant, who would be grooming dogs, who had to deal with the clients when they learned from the Department that it had not received the reports. Another colleague, who worked in the office on Saturday mornings reported to AC that the claimant was taking tablets over a few months and that she had neither given her money for them nor left a docket to record what she had taken and pay at a later date. This was affecting the practice. AC also reported this to the respondent. The principal spoke to the claimant on 26 March 2003. Things improved for a while after that but then she resumed grooming again. The last time she saw the claimant groom a dog was on 20 August 2003. She sometimes filled in for the claimant and could not therefore get her own work done. She did not speak to the respondent about the problem again after March 2003. While the respondent believed AC reported these incidents to him, in 2004 AC was adamant that she made the complaints in 2003.

Subsequent to receiving the complaints the respondent confronted the claimant about grooming animals in his time and told her it could not continue. He told her she could do her grooming on her own time, at night or weekends and probably also told her she could use the clinic. The claimant initially denied it but then admitted it. He told her that he knew that the money was not going into the kitty. She promised to stop. The respondent did not think that he had said anything to the claimant about veterinary drugs at this time. He had not told her AC had made the complaints as he did not want any friction between the two of them in the office. A few weeks later when the respondent spoke to AC again she said that things were better.

All of the concerns came to a head when the claimant was out sick from the end of April to mid July in 2005. During that time Veterinary Surgeon F (VF) and Veterinary Surgeon M (VM) as well as the respondent's wife made complaints to the respondent. These complainants also confirmed their complaints in evidence to the Tribunal. VF who worked with the respondent from June 2004 to March 2006 told the Tribunal that while examining a very sick dog who had nervous symptoms in Castletownroche, the owner informed her that the claimant had seen the dog earlier that day and had given it some medication/tablets. The claimant was not qualified to do this. The owner showed her the particular tablets that had been given to the dog. VF said the particular tablets should only be taken under a prescription but no vet had prescribed them.. The owner told

the witness that the claimant had given them to her that day. VF was angry and told the respondent that she could not work with the claimant who was undermining her and taking over her job. She also believed that the claimant was examining, diagnosing and vaccinating dogs when she should not have been doing so. She had heard her diagnose and prescribe for small animals. On one occasion she saw the claimant x-ray a dog. The claimant was not entitled to sedate dogs except under the supervision of a vet. In a pre-operation clipping the hair is completely removed from a small area around the site where the incision is to be made. A dog is always sedated for the pre-operative clipping. VF could not say if it had been the practice to ask the claimant to sedate a dog prior to an operation. She could not say it did not happen. The claimant did not have the legal authority to do so without the supervision of a vet. The drugs are kept on a shelf and no record is kept of drugs given out; however they are recorded on the animal's file.

VM, who worked with the respondent from November 2004 to May 2005, also saw things that caused him concern. At first he said nothing as the claimant had been there for five or six years and he had just started. One Saturday at about 9.30am he met the claimant coming out the back door with a box of dog vaccines. He admitted that he did not know if she had paid for them but he thought it was suspicious that this was being done before the office opened up on a Saturday morning. He probably should have told the respondent at that time. VM saw the claimant grooming on numerous occasions. The first time was shortly after he started working in the practice. The claimant had her own equipment and she was grooming a white haired dog. The dog was sedated. He had not sedated the dog and he was the only vet on the premises at the time so he assumed that the claimant sedated the dog herself, which she was not entitled to do without veterinary supervision. Clipping for pre-surgery and grooming are very different. On one occasion she had vaccinated a dog and signed the vaccination certificate but when the client brought the dog in for the second vaccination he found a lump on its neck at the site of the previous vaccination, which he assumed was caused by an unclean needle. When the claimant was out sick things came to a head as people were telephoning to have their dogs groomed and asking to have them sedated. Blood samples that he and others had taken on Mondays were not processed and sent to the laboratory but were still in the office on Wednesday. The claimant was very slow in sending off TB reports. The TB reports for his own herd were six weeks late being sent off. He was also aware that the claimant was regularly doing consultations and giving out antibiotics. She was not covered by insurance if anything went wrong. He told the principal of his concerns in April 2005.

In February/March 2005, when the respondent's wife called to the surgery to collect some medicines there was no one in attendance in reception. When she went through an inside door she saw the claimant clipping a lassie collie it was anaesthetised. She was emphatic that it was a lassie collie she had seen and not two shiatsu. She was emphatic that the dog was not having a pre-operative clip. If it had been a pre-operative clip one of the vets would have to be present to carry out the surgery. The dog was being groomed when she first saw it and it was still being groomed some five minutes later. She did not raise the matter with the claimant. She reported it to her husband. This occurred after the claimant had been told that she was not to groom dogs in the respondent's time.

In the spring of 2005 it was clear to the respondent from what he had been told that the claimant was running her own enterprise, interviewing clients about their animals, diagnosing and treating small animals and prescribing for them. It was illegal for an unqualified person to do this. An unqualified person could only dispense on a vet's instructions. She did not have an indemnity. He could be open to prosecution. The two vets in the practice said that something had to be done when the claimant came back and they felt the practice was getting a bad name. They were not happy.

He thought about the matter and on 13 July 2005 he wrote to the claimant:

*"I note your intention of returning to work on foot of medical certificate recently received.*

*I must in fairness to you advise you that during your most recent absence from work I received numerous complaints which caused me great concern.*

*As a result you might kindly contact me so we can arrange to meet to afford you an opportunity to address these complaints before I can arrive at a decision."*

The claimant did not respond to the letter and returned to work on 14<sup>th</sup> July 2005. The respondent met the claimant on Saturday 16 July and told her that she was breaking the rules again. She denied it. This meant she was calling his wife liar. He could not take it any longer. He had trusted her implicitly and now that trust was gone. He dismissed her. He assumed that was the end of it. He then went on holiday.

He telephoned the office the following Monday or Tuesday while on his holiday and was surprised when the claimant answered the phone. She told him that she was still an employee and that she was not going until she got something in writing. He agreed to put her dismissal in writing. His son delivered his letter of 22 July 2005 to the claimant, which read as follows:

*Further to my letter to you on the 13<sup>th</sup> and our meeting on Saturday, I regret to advise you that in view of the gravity of the complaints and the unsatisfactory nature of your response to same when put to you, I have no option but to terminate your employment forthwith. You might kindly arrange to remove any personal items from the office and return any keys you may have in your possession. I will revert to you with your documentation including your P45 and money owed to you at an early date."*

He regretted not taking action much sooner. He changed the locks as the claimant had had a key. She had worked two days after her return from illness. She received her wages up to 22 July 2005, her holiday money and her P45. In her employment the claimant worked five days per week and worked at an evening clinic. The respondent replaced the claimant.

Customer accounts are kept on the computer and when medicines are collected/purchased they are entered on the account. There are only two in office now and they have no problem getting the work done. There were times when he was on his way back to the office and if he knew a dog was being brought in and needed sedation he would ring one of the girls and ask them to administer the amount of the sedative required. The sedative would take twenty minutes to work and at the point where he asked one of the girls to give the sedative he would be already on route to the office. This practice would be dangerous without veterinary supervision

One of his main concerns was that the claimant was administering sedatives from the office. Delays with TB reports unnecessarily prolonged restrictions on herds. Anyone can administer an injection once he/she was practiced in it; the important thing was the dosage. It was legal for an unqualified person to administer an injection once a vet tells the amount of the dose. A sedative paste, which is administered externally is sometimes applied by the owner of the animal; this would calm down the animal down but it is not a full sedative.

### **Claimant's case:**

The claimant finished school in 1995. She did a two-year course in Animal Care and Veterinary Nursing from 1996 to 1998. She confirmed her work history with the respondent. When Ms. H, retired in December 1998 the respondent asked her take over on a full time basis. She had to clean the kennels and walk the dogs in the morning and therefore she could not always answer the phone. When dogs were kept as in-patients she administered injections to them. These dogs also needed cleaning and feeding. She did the office work and assisted with the small animal clinics in the afternoon. When farmers came and asked for a particular medication for a sick animal the medication was handed out and was recorded in the docket book. The docket was then passed to AC who dealt with the accounts. If a client asked for a particular medication it was handed out but for non-client the norm was to ring the vet and ask their advice. The drugs and medication were kept on shelves and there was no record kept except for the docket book and if the customer paid on the day they would get a docket marked paid.

When a colleague left in March 1999 the staffing level fell to two therefore it was busy dealing with three phones and assisting the vets. Her relationship with the respondent was good. In the summer of 2001 she was out of work for ten to twelve weeks recovering from an operation and the respondent had no difficulty about this. Her problem recurred later that year but antibiotics relieved her symptoms and she remained at work. In April 2005 she was hospitalised again and was out of work from 28 April until 14 July 2005. During this time her sister or mother sent in her medical certificates. On 24 June 2005 she received a telephone call from the respondent and having enquired about her health he told her there was a problem and that he would have to advertise her job in the paper. When she asked for the reason he told her he had got some complaints while she was out sick. When she enquired further he told her that farmers were complaining and he also accused her of doing house-calls to treat animals and that she was charging for her own benefit. He refused to tell her who made the complaints and suggested that they go their separate ways. The claimant said she had done nothing wrong and wanted to know what exactly she was being accused of. The respondent said he had not mentioned it to other staff and he was going on a call and would talk to her later. She did not hear further from the respondent and she handed in her final medical certificate on 11 July 2005 certifying her fit to return to work on 14 July 2005. On 13 July she rang the respondent on his mobile and there was no reply. She then rang the office and left a message asking the respondent to ring her which he did that night at 8.00pm. She told him she had handed in the medical certificate and would be returning to work the following day. He told her there was really no point, that he was going to make changes and suggested that they go their separate ways. The claimant said she could not accept that as an answer and would like to know the complaints made against her. He promised to get the complaints for her. She rang his house and told him she was going in to work that morning and he hung up.

The claimant went in to the office at 9.30am on 14 July and set about her days work. She spoke to the respondent on the telephone a couple of times during the day but it was around 5.10/5.15pm he told her he had forgotten to tell her that she was to finish at 5.30pm. She went home after a hard day's work and felt tense. When she arrived at work at 9.25am the next morning she could not get into work as one of the locks on both the front and back door had been changed. Another employee let her in. In work a letter, dated 13 July 2005, from the respondent was placed on her desk. It reminded her that complaints were received about her during her recent absence. When the respondent came to the office at 2.55pm she asked if they could meet and he

said that he would be in later. She waited in the office until 5.40pm and then told one of her colleagues to ring her on her mobile if the respondent came in as she could come in straight away. She did not receive any contact from the respondent that evening. At around 3.25pm on Saturday 16 July 2005 the respondent telephoned and asked to meet her on the side of the road at a particular junction on the Cork to Mallow road. When they met the respondent again referred to the complaints and said he had to make changes. The claimant said she had done nothing wrong and she wanted to know what the contents of the complaints and who made them. The respondent then proceeded to say that it was not just the complaints \*\*that staff had sent text messages to him wanting to know what was to be done about her. When she told him that she did not think that any of the staff had problems with her, his response was "bullshit". He would not give her the names of those who made complaints and again asked if they could go their separate ways and said she could get a job elsewhere and that would be the end of it. When she asked for the complaints in writing he raced off to his jeep.

She went in to work on Monday and worked until Friday 22 July 2005. Her colleague left her in each day as her keys did not work. At 3.30pm on the Friday the respondent's son came in and gave her a letter of dismissal. She stayed at work until 5.40pm and left her keys in the office. The claimant said she did not know of any allegations until she read a letter dated 7 September 2005.

Her family had twenty-five greyhounds and four pet dogs. She asked the respondent if she could groom on her days off on Saturday and he agreed once it was done on her own time. If an owner required a dog be "tidied" before an operation she would do it. A vet who had previously worked for the respondent for two years often asked her to do so. She groomed dogs possibly once a week or maybe once every two weeks. When medication came in she removed it from the boxes and put it on the shelves. If a client came in looking for medication she would give it out and document it. If someone rang about a particular ailment she would ring the vet who would prescribe medication and she would then prepare it and give it to the client. If dogs were staying in overnight they would have to get injections in the mornings and evenings. If she ever removed medication it was to leave it in a local public house for a client. There were also times when the respondent would ring and ask her to leave medication on the back window for a client who could not get in before closing time. If her sister collected a spray she (the claimant) paid for it the following Monday when she came to work. If one of her dogs at home had some ailment she would ask one of the vets what to use and she would then get the medication ready and pay for it or her father would do so. She did not take stuff and not pay for it. She would write a docket and pay in cash. She did not treat animals in the clinic and never had consultations or diagnosed animals. The respondent frequently telephoned her and asked her to sedate a dog; he would ask her to weigh the dog and based on its weight he would tell her what sedation to give it; she would then inject the dog and have it ready for surgery when the respondent arrived. If she had to groom a robust dog in a person's home she would tell them to get a sedative (a paste or tablets) from their own vet and to administer it twenty to thirty minutes before she would arrive in order to give the sedative time to work.

She could not recall x-raying a dog but speculated that if it occurred it may have been after a road traffic accident and she could have been told by the vet to carry out the x-ray while he was on route to the clinic. It was generally busy in the mornings in the practice. The bloods and TB testing is done by the vets on Monday and the samples are brought back late in the afternoon, the report was prepared the following day and the samples were sent that day or Wednesday at the latest. When she was grooming the dog in Castletownroche she noticed it had a twitch in its eyes and she advised the owner to ring the office or VF to deal with it. Later that night/morning at 12.30am the owner

rang the claimant as she could not get a vet and that the dog was getting fits. The owner later rang back and thanked the claimant and told her about her dog's progress. She did not administer drugs that day.

**Determination:**

An employee is entitled to know the allegations against her and to have an adequate opportunity to present her defence to those allegations. The Tribunal is not satisfied that all of the allegations were put to the claimant or that she was afforded an adequate or proper opportunity to answer those allegations. The Tribunal finds that there was a serious lack of fair procedures in this case. The claim under the Unfair Dismissals Acts 1977 to 2001 succeeds.

The Tribunal accepts that the respondent had cause for concern on a number of grounds. The claimant, by her behaviour, contributed substantially to her dismissal. The Tribunal is not taking the claimant's time in America into account in determining her loss. Having taken the claimant's contribution into account, the Tribunal awards her compensation in the sum of €1,175 under the Unfair Dismissals Acts 1977 to 2001.

The claimant is also entitled to the sum of €1,203.36 under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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