

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD632/2005

RP286/2005

MN459/2005

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney BL

Members: Mr. M. Forde

Mr J. Mc Donnell

heard this claim at Cork on 21st June 2006
and 17th January 2007
and 18th January 2007

Representation:

Claimant: Mr. Frank Nyhan, David J. O'Meara & Sons, Solicitors,
Bank Place, Mallow, Co. Cork

Respondent: Ms Niamh Stewart BL instructed by Benita Meagher solicitor,
Daly Derham Donnelly, Solicitors, 32 Washington Street, Cork

The determination of the Tribunal was as follows:

Background:

The Respondent is a solicitor. The Claimant contends that she was unfairly dismissed by letter dated 17th February 2005. She was suspended without reason on morning of 11th January 2005 and furnished with a redundancy forms RP1 and RP2 on 17th February 2005. There was no valid redundancy situation or grounds for selection for redundancy.

The Respondent contends that the Claimant's conduct left much to be desired in relation to a number of matters, it became necessary to suspend the Claimant during investigations. The Respondent entered into negotiations with the Claimant subsequently and was prepared, in the

interest of resolution, to treat the dismissal as a redundancy. There were substantial grounds justifying dismissal.

Respondent's case:

The Tribunal heard evidence from the principal (JM) of the Respondent company. She began working for the Respondent company circa 1994. Her late husband was the principal of the Respondent company and when he passed on she took over ownership. In April 2001 the Claimant commenced working in the company as an assistant solicitor. There were two solicitors and a secretary in the company. The Claimant was to work on conveyancing for three days per week. There were no complaints about her work.

In August 2004 the witness explained that she went on holidays. On her return the secretary told her that the Claimant had treated a new junior secretary (Ms O'S) badly and had reduced her to tears. She called Ms O'S to her office and Ms O'S told her that the Claimant had called her names such as stupid and told her that she was in the wrong job. The witness told Ms O'S, that she would speak to the Claimant.

She asked the Claimant to see her in her office. She told the Claimant that the secretary had been reduced to tears. She told her that it was a small office and they had to "get on". The Claimant told her that the secretary was inadequate as a secretary. She told her that the secretary was insolent. The witness was shocked at the Claimant's attitude. The Claimant wished to know what the allegations were and returned to her office. The Claimant phoned her later and again said that she wanted to know what were the times and dates of the incidents.

The Respondent received complaints from the Law Society concerning the treatment of a client by the Claimant. The Claimant had also exposed the firm to a possible lawsuit. The Claimant had communicated to a client to correspond to her home address and the witness was concerned in relation to the firm's professional indemnity. The witness also gave evidence that the Claimant had falsified her signature whilst she herself was on holiday.

The witness also told the Tribunal that she had difficulty recovering files that the Claimant kept in her home. It came to her attention that files were missing. She put it to the Claimant that the files that were removed to her house would not be covered by the company insurance. The Claimant told her that she was categorising the files.

The witness and a Mr. O'L had a meeting with the Claimant on 11th January 2005. They put to the Claimant that she had written to a beneficiary of a will from her home address. The Claimant expressed amazement and was aggressive. Mr. O' L asked the Claimant if she wished to consider her situation and that she could get suspended be made redundant or be dismissed. They suspended the Claimant and asked her to give them the keys to the office.

The Claimant did not give them an explanation. The witness wrote to the Claimant on 13th January 2005 and the Claimant did not respond.

The witness told the Tribunal that she never received an explanation as to why the files were in her house except to say she was categorising the files. The Claimant was acting as solicitor from her home address and the Respondent's insurance did not cover this. Her investigation was fraught and there was a complete breach of trust.

In cross-examination the witness was asked for specific reasons as to why the Claimant was dismissed. She explained that it was for gross misconduct: her treatment of the secretaries, her taking a will of a client, her removal of four boxes of files, the law society complaint and a colleagues complaint. Also the Claimant's attitude to her and that the files were at her home and the insurance did not cover this. The Claimant's explanation for the latter was inadequate.

Evidence was also given by two other witnesses who found the claimant difficult to work with she was insulting and regularly reduced them to tears. They both got on great with all the other staff in the office.

Claimant's case:

The Tribunal heard evidence from the Claimant. She had worked in the banking sector and prior to 1988 made a career change. She qualified as a solicitor in 1988. She commenced working for the Respondent in 2001 as a conveyancing and probate solicitor. She worked for three years without difficulty.

The Claimant told the Tribunal that on 24th August 2004 JM returned from holidays and was not entirely engaging with her, "she barely looked at me". At a later date that week JM spoke to her about a colleague, Ms O'S who was upset and it was a small office. She told JM that she helped a colleague a lot by answering phone calls for her and helping with files.

Regarding one of the secretaries, the secretary banged doors. This secretary told her that she would not type for her anymore as she had corrections to do. There was also a difficulty in the office regarding a bill of costs that she was doing and the secretaries were involved.

The Claimant outlined difficulties that she had regarding queries about JM's files.

On 30th November she was called to a meeting with JM. JM told her that she was alarmed about the complaints of the staff. She asked JM what staff and when JM told her not to raise her voice and to go to her room and return in a better frame of mind.

JM told her that she had taken boxes of files. She explained that she had taken the files to schedule them before she went on holidays and they were files that she had brought from her previous solicitors office.

Before she went on holidays JM informed the Claimant that she was reducing her working days to two and that her accountant told her that her commission would have to be taxed.

On 11th January 2005 JM phoned her to ask her to call to her office. She called to her office and JM and another solicitor a Mr. O'L was there. She was not told of the nature of the meeting. Mr. O'L outlined complaints about her. He was quite specific that there were three complaints. One was about the law society and two were about the staff. She told them that she was concerned that she would need a solicitor present. He told her that he was only there as a go-between. He said that as it involved staff she was not entitled to details and was not going to get any. JM asked about a situation that she acted as an executrix. The Claimant gave extensive evidence about her dealings in relation to this and like matters. They told her that they would report her to the law society. They gave her three alternatives. The Claimant was suspended on 11th January 2005.

Determination:

The Tribunal are of the unanimous opinion that after three years working together when the relationship between the parties mutually broke down irrevocably, in the Autumn of 2004, that the claimant decided to set up practice on her own account.

The Tribunal is of the opinion that many of the actions of the claimant, although not strictly in breach of Law Society Code of Conduct and Regulations amounted to, and was fair in the eyes of the Respondent to be interpreted as, sharp practice. Further, the claimant by writing in her professional capacity from her home address was misrepresenting herself and the Tribunal view this most seriously.

All the evidence the Tribunal heard, including the above amounted to substantial grounds justifying the decision to dismiss.

However, the Tribunal are of the opinion that the meeting of 11th January was procedurally defective and even taking into account the minutes of the meeting handed in by the Respondent, the way this meeting was conducted was far below acceptable standards of fair procedures.

Despite the fact that efforts on both sides were made subsequent to 11th January to try and resolve the matters, this lack of fair procedures makes the decision to dismiss unfair.

Therefore taking all circumstances into account we award the sum of €7,500.00, under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal awards the claimant the sum of €1,567.30, as compensation in lieu of notice under the Minimum Notice and Terms Of Employment Acts, 1973 to 2001.

The claim under the Redundancy Payments, Acts, 1977 to 2001, was withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)