

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

Employee

CASE NO.

UD38/2007

MN24/2007

against

2 Employers

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 M. Levey

Members: Mr J. Reid
Mr B. Byrne

heard this claim at Dublin on 6th May 2007

Representation:

Claimant: Maurice Leahy of Maurice Leahy Wade & Co. Solicitors, Archway House,
The Plaza, Swords, Co. Dublin.

Respondents: Conor Gallagher of Thomas Loomes & Co. 1 Coolock Village, Dublin 5.

The determination of the Tribunal was as follows:-

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 was withdrawn.

The dismissal was not disputed. The onus was on the respondent to show that the dismissal was fair.

Respondent's Case

The owner of the shop gave evidence. The claimant was initially employed as a part-time cleaner. Later when she helped to manage the shop she worked full-time. There were no problems in 2003. In 2004 cash flow problems almost resulted in the business going under. One staff member was let go and two were made part-time.

An atmosphere developed in the shop. Staff members were not happy. The relaxed atmosphere went. The junior staff felt that the claimant had favourites. Also she wanted more weekends off than had been agreed.

The week before Christmas a packet of cigarettes worth €2,000 was not included in a delivery. The docket was signed by a junior. The matter was resolved and there was no loss to the shop. The witness was annoyed by the claimant's attitude, she was not bothered by the incident.

On one occasion the claimant left a teenager alone in charge of the shop. After that, the witness had guidelines for staff drawn up and copies were put up in the staff changing room.

The atmosphere in the shop did not improve. Then on 27th December 2006, he sent the claimant a text message instructing her to close the shop at 6.00pm. She, however, closed the shop at 5.40pm.

On New Year's Day he sat down with the claimant to discuss matters with her. She said that there was no atmosphere in the shop. The claimant was dismissed.

The claimant did not receive wage slips. She had no contract of employment. No written warning was given.

Claimant's Case

The claimant worked as a manager in the respondent's shop. She had left a junior alone in the shop, the place was quiet and she was only gone for 5 minutes. The respondent did talk to her about it. She did not feel that her job was in jeopardy.

The incident with the cigarettes happened at lunch-time. The shop was very busy. The respondent was there and dealt with the matter.

She shut the shop early on 27th December. It was a Sunday night and a gale was blowing, no business was being done.

She heard nothing about the atmosphere in the shop until the evening she was sacked. There had been no discussion of her job performance or any mention that her job was a risk in advance of termination of employment.

The claimant was shocked to be dismissed. She is now looking for another job.

Determination

The Tribunal considered all the evidence and the submission on the claimant's obligation to mitigate her loss.

The claimant was not notified in advance of the meeting at which she was dismissed. She had no representation at the meeting. The Tribunal finds that the claimant was unfairly dismissed. Her claim under the Unfair Dismissals Acts, 1977 to 2001 succeeds. An award is made of €8,000.00.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

