

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD443/2006

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney

Members: Mr. J. Redmond
Ms H. Henry

heard this claim at Galway on 4th July 2007

Representation:

Claimant : In person

Respondent : Tom Smyth & Associates, 41 Halldene Drive, Bishopstown, Cork, Ireland

The determination of the Tribunal was as follows:

Claimant's Case

The claimant commenced employment with the respondent in April 2004 on a part-time basis. Prior to going on certificated sick leave in July 2005 she worked varied hours on the meat counter in this shop. In the course of submitting medical certificates the claimant told the manager that she would be unable to recommence duties at that location due to her medical condition. That manager was replaced in the autumn of 2005 and the witness then approached his replacement and informed her that she could not return to that counter. That manager assured the claimant that that issue would be "sorted out" when she again reported for work.

In early January 2006 the claimant was issued with a certificate from her doctor declaring her fit to resume work. In telephone conversations with the proprietor of the premises she learned that her preference for morning work only was not possible. She told him that she was also willing to undertake other hours at other times of the day but not in a "cold area". Due to her ongoing health condition she was prevented from working in such sectors. The proprietor told her that there were no alternative positions available other than the meat counter at that time. The only sick certificate wanted by the respondent was one stating she could work there. The witness then reminded the respondent that she had given notice of this development some months previously. The manager agreed that this was the case.

In disputing that arrangement the proprietor said he should have been told of that development and added that he was the manager too and that the other person involved was acting manager only. He insisted there was no other job for the claimant and she was adamant she could not work at the meat counter. The claimant felt that under the circumstances she had no option but to leave the respondent. In seeking her P45 and P60 the claimant was told they would be withheld unless she submitted her resignation in writing.

Respondent's Case

The proprietor recruited staff in a general way and placed them in different sectors as he had overall authority for staffing issues. When he was happy with an employee in a particular role the witness was slow to move them. The claimant's medical certificate dated 3 January 2006 stated she was fit to return to work on 9 January. He asked the claimant to go back to the doctor for a certificate allowing her to work on the meat counter as this where he wanted her to work. The claimant did not do that as she said her medical condition precluded her from cold or chill areas. She also wanted to work mornings only. The witness indicated to her that there were no alternative positions available and that her work patterns would have to include times other than mornings. At that time there was no facility to transfer staff. The owner who up to then never had a problem with the claimant said there would be no difficulty with her return to work provided it was at the meat counter.

Determination

The Tribunal had to decide whether the claimant was justified in leaving her employment in this case. The respondent employed staff on a general basis. That arrangement allowed the proprietor to be flexible in staffing issues. The claimant was not specifically employed on the meat counter notwithstanding her experience there prior to her absence due to medical reasons. She gave evidence that she gave the management ample notice that she was unable to return to that position. It appears the proprietor either disregarded that or was not properly informed of that situation. Either way he was unwilling to adequately explore other work options for the claimant when she informed him of her ability to return to work. This was unreasonable on his part and therefore we find that she was left with no option but to resign from her employment in the circumstances. In finding for the claimant under the Unfair Dismissals Acts, 1977 to 2001 the Tribunal awards her €7,000.00 in compensation under those Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

