

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD436/2007

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL
Members: Mr. R. Prole
Ms M. Mulcahy

heard this claim at Dublin on 14th September 2007

Representation:

Claimant:
In person

Respondent:
Mr Duncan Inverarity, BCM Hanby Wallace, Solicitors, 88 Harcourt Street, Dublin 2

The determination of the Tribunal was as follows:

The Tribunal has carefully considered the evidence adduced at this hearing. The applicant's employment was terminated in circumstances where she had been on sick leave for 16 months with a series of unfortunate medical complaints. There is no question as to the veracity of the applicant's medical condition and the respondent company accepted the situation was a genuine one. The Tribunal is sympathetic to the respondent's predicament. On the one hand an employee of some seventeen years standing is out for over a year and a half on certified sick leave with no end in sight. On the other hand a position is being held open with no obvious prospect of being filled and plenty of willing prospective employees looking for an opportunity to work.

There is no doubt that a company is entitled to have a complete and hardworking workforce. Absenteeism in the workplace is a serious problem and means that others are expected to pick up the shortfall, which leads to discontent. The Tribunal accepts that an employer has to be entitled to terminate the employment of a person if someone, through ill health, never seems likely to return to the workforce.

That said, the Tribunal is mindful of the fact that no consideration was given to the notion of re-integration at a level, which would have been supported by medical

opinion. In other words, could the Applicant have been invited to come back on a limited part-time basis doing work geared to her ability? No such option was offered and there seems to be no real policy in this regard.

The employer and employee had kept in regular touch with one another over the year and a half absence from the workplace. The applicant had attended any meetings required of her. There were informal and, whilst the issue of not keeping the position open on an indefinite basis had been raised, it was only presented as a fait accompli at the meeting of the 13th October. The Tribunal is highly critical of the fact that the applicant was invited to this last meeting on her own. The Tribunal believes that the applicant was very upset to learn that her employment was definitely going to be terminated in a month hence if she didn't come back to fill her old position. Perhaps she even suggested that she'd come back regardless of not being certified well enough to do so.

Either way the applicant was allowed no opportunity to explore alternatives to having her employment terminated.

As previously stated, the Tribunal accepts that the employer is entitled to terminate but the manner of this dismissal was unfair for being insensitive and possibly premature where no alternative work program was explored.

The Tribunal notes that the applicant has been in alternative employment since February 2007, which affords less remuneration but is better suited to her physical capabilities.

The Tribunal awards the sum of €4,000.00 in compensation to the applicant under the Unfair Dismissals Acts, 1977 To 2001.

The Tribunal also notes that four weeks minimum notice has yet to be paid to the applicant and, in addition, an outstanding Christmas bonus is to be paid to the applicant.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)