

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

UD275/2007

MN182/2007

WT85/2007

against

Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. N. O'Carroll-Kelly B.L.

Members: Mr. J. O'Neill
Mr. J. Maher

heard this appeal at Dublin on 21 September 2007

Representation:

Claimant:
In Person

Respondent:
Mr. Dominic O'Donoghue, Director of the Respondent

The determination of the Tribunal was as follows:

The claimant was employed to work in the deli section of the respondent's convenience store from late January 2006. Some nine months later the claimant was moved from the deli section and began working on the cash register. The respondent's position is that this was because the working relationship between the claimant and the deli supervisor (DS) had broken down. The claimant's position is that this was a move requested by her to give her wider experience in the employment. The respondent's position was that the director (DR) had given verbal warnings to the claimant over hygiene matters, including failure to wear the correct headgear and excessive smoke breaks. The claimant denied having received any such warnings. No documentation concerning any verbal warnings was seen by the Tribunal.

On 5 February 2007 the claimant accepted a €200-00 note, which later proved to be a forgery. The respondent's position was that it was contrary to the respondent's policy to accept notes greater than €50-00 in denomination. The claimant's position was that she had never been made aware of this policy. The claimant was dismissed when she arrived for work the next morning on 6 February 2007. The respondent's position was that the claimant had been issued with a final written warning on 2 February 2007 in relation to uniform issues. The claimant's position was that she had not received any such final written warning prior to her dismissal.

Determination:

Whilst the Tribunal accepts that DR told the claimant of his displeasure at certain events the Tribunal is not satisfied that any formal verbal warnings were administered. The Tribunal is not satisfied that the claimant was aware of the written warning of 2 February 2007 before the dismissal. The claimant was given no opportunity to defend her position in regard to the dismissal. In such circumstances the Tribunal finds that the claimant was dismissed without any, or fair, procedures. It must follow that the dismissal was unfair. Accordingly the Tribunal awards €9,700-00 under the Unfair Dismissals Acts, 1977 to 2001. This award takes into account the fact that the claimant was being paid below the National Minimum Wage at the time of the dismissal and has been calculated based on the National Minimum Wage. The evidence having shown the claimant was paid the requisite period of notice the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 must fail. The evidence having shown that the claimant received pay for three weeks' holidays during her fifty-three weeks of employment the Tribunal awards €307-50, being one week's pay, under the Organisation Of Working Time Act, 1997.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)