

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

MN157/2006
WT88/2006
UD279/2006

against

Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr. M. Forde
Mr J. McDonnell

heard this claim at Cork on 10th July 2007

Representation:

Claimant :

Timothy Lucey & Company, Solicitors, North Square, Macroom,
Co. Cork

Respondent :

Mr. John Barry, Management Support Services (Ireland)
Limited, The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:-

Respondent's case:

The respondent has an office in Dublin and the manufacturing is in Cork. There are twenty five staff with eighteen on the production side which could vary depending on the contracts. They try to avoid laying-off staff. They make miniature cosmetics for the first class flights and to a small extent hotels. They make the cosmetics, put the soap into cartons and they make the bottles and cartons in addition to their decorating them also. The first class business kits tend to be made in China and

90% of what they make ends up in China with a five week shipping time. It a very difficult economic situation where there in a minimum wage but there is no means of control in this area in China and other countries. The respondent pays the national minimum wage.

The original supervisor was made redundant and the respondent was hoping to combine a number of functions. The number of functions were brought down form eight to six and while they wanted to look after the original supervisor they also wanted to bring down the management overheads. There would have been a vacancy at operative level and they would have maintained the pay but she took the redundancy.

The Tribunal heard evidence from the director who is the controlling shareholder and acts in a number of other roles in the company including that of director. He is based in Cork two to three days per week as on a need basis. The claimant worked as a general operative and had a very good work record. There had been one incident in mid 2005 when she told the manufacturing manager that the company were recruiting for her job. On 19th September 2005 the claimant came knocking on his door looking for a meeting. She was doing a lot of talking and was very aggressive and bossy. She wanted to know about the original supervisors redundancy and wanted her re-instated. Another employee AO'B also wanted her re-instated. Witness said he could not discuss the details of her redundancy. Another employee, E had been hassled unpleasantly by the claimant because she had not supported her in relation to M/original supervisor. E went home and he asked the claimant to come and talk to him. He told the claimant she should not be interfering with E and to get back to work however the claimant took this to mean he was inferring that she was harassing E. Correspondence dated 22nd September and 17th November 2005 was opened to the Tribunal.

On 28th November 2005 he heard indirectly from the operations manager that the claimant had said to a non-Irish employee there would be shortage of work after Christmas. This employee is from Latvia and she would normally go home for a months holidays at Christmas. This was also the day that two colleagues of the claimant had tendered their resignation. On 30th November E and the claimant were working on printing and E hurt her hand needing stitches. Witness organised an ambulance and when it was delayed a doctor was called to attend in the interim. While he was waiting with E, he was unaware that the claimant had brought the doctor through the back door. The doctor checked E who needed stitches only but she subsequently went in the ambulance when it arrived. The firemen were also interested in seeing the location of the machine and while witness was distracted he saw the claimant bringing the doctor into the factory area. Witness was concerned as the claimant had no health and safety responsibility and she was bringing a third party around the factory. No operator would do this and without permission, it was very unusual. The claimant was issued with a letter dated 1st December, 2005 and was asked to explain the distress she caused to the non-Irish employee and to explain her presence in the warehouse on a particular day. The claimant responded by letter dated 5th December, 2005. The claimant had told the non-Irish employee that the reason two colleagues had resigned was that there would be a shortage of work after Christmas. The non-Irish employee was very upset on hearing of the work shortage. Witness said the claimant had lied to the respondent about the non-Irish employee and he felt that she lied also about the doctor seeing the machine in the factory.

Witness came to the view that the respondent had lost confidence in the claimant. She was lying about things and they could not continue to employ her. In their business you depend on people trust that bad product is not put into the line which in turn would result in complaints and possibly action by customers. The claimant was called in with a witness and the reasons for her

dismissal were outlined to her. Her response was that “to tell you the truth I was expecting that”. She was dismissed for gross misconduct with effect from the 14th December, 2005.

In answer to questions from Tribunal members witness said he deduced that the claimant was telling lies in relation to the fireman and the doctor. Witness did not discuss the contents of the claimant’s explanation letter of 5th December 2005 as he was of the view she had been telling lies.

The Tribunal also heard evidence from the operations manager. In June 2005 the manufacturing manager asked her if she was interviewing for her job as she had been told this by the claimant. There had been a discussion in relation to child care costs in Latvia and witness was interviewing for a job in Dublin but there was no reference to the manufacturing manager’s job. The claimant came to her saying she thought she had been interviewing for the manufacturing manager’s job and witness told her this was not the case. She visited the factory 2/3 days per week and it was not the case that she did not deliberately not talk to her. The claimant came into the office one day and commented that witness had not said goodbye to the original supervisor. She also became aware of the non-Irish employee being upset by the claimant telling her there would be no work after Christmas. Her only involvement in the accident was in calling the ambulance and accompanying E to hospital. She also felt that the claimant was lying and made the decision with the previous witness to dismiss the claimant.

The Tribunal also heard evidence from the employee from Latvia who worked as general operative and she knew the two employees who tendered their resignation on 29th November, 2005. She was due to go home for Christmas holidays and the claimant told her that there might not be a job for her after Christmas. She was upset and crying and worried that she might not have a job after the holidays. She spoke to E and the operations manager about what the claimant had said.

Evidence was also given to the Tribunal by E. She had a working relationship with the claimant. She was asked to go to the meeting on 19th September 2005. Prior to the meeting she saw the director and the claimant in the hall and he said that she did not have to go to the meeting however the claimant demanded that she would go. She went to the meeting but only listened and when she was leaving the claimant was angry with her for not standing up for them at the meeting. Witness was upset at her tone of voice and felt intimidated by her and she went to the director. She could not face going back out on the floor so she went home. The previous witness also told her about the claimant upsetting her by saying if she went home for the Christmas holidays there might not be a job for her to return to. She reported this to the manufacturing manager.

Two days later the claimant was working on a printer that prints blank tubes. Witness sets up the machines every morning. On this particular day the claimant was not happy being on this machine as she had also been on it the previous day. She suggested it was a matter for the manufacturing manager. She came back and noticed that two bins had printed blank and that was when her accident happened. Her clothes got caught and the claimant got somebody to turn off the machine and witness went to hospital. She called with medical certificates to the operations manager and when she returned to her car she found chocolates and flowers and was told they were from the claimant. When she went to thank the claimant she advised witness that if she was in her position she would claim compensation. She was not aware whether the director or the operations manager were talking to the claimant after 19th September.

Claimant's case:

The claimant worked for the respondent for seven and a half years. She recalled one day when the operations manager asked if she would work late that night and she agreed. The operations manager commented that she had interviewed somebody and that they did not take the job as child-minding costs were too high. That morning they had meeting with the director and she had thought that because of the comment from the operations manager that a new member of staff would soon be starting. She did not say that the operations manager was interviewing for the manufacturing managers job. On 19th September 2005 she was upset as the original supervisor did not come in to work that day. Another employee had been told to take holidays and since the original supervisor did not come in witness thought that she might be on holidays and would not be coming back. At the meeting when she asked if the original supervisor was coming back she was told that she was not. They were all in the office and when B/director came in he said to leave E alone. It was all about the original supervisor and why was she let go and who is going to be their supervisor. They were told that the original supervisor was made redundant and that she was happy. The question was asked as to whether that could happen to others, meaning could other staff be made redundant and the response was that they hoped not. On the way out she spoke to E and asked if she the witness was upsetting her and she said she had no problem with her. The director then asked her back to the office saying he had heard she was spreading lies on the factory floor and asked was she harassing E.

She sent a letter to the director dated 22nd September 2005 because of the way he was on to her about E. The claimant and another colleague (AO'B) wrote a similar letter. The claimant also contacted the Equality Authority and informed the director that she had done so by letter dated 15th November 2005. In relation to the employee from Latvia being upset on 28th November the claimant said they had been discussing the fact that two colleagues of the claimant were leaving and the employee from Latvia who had only been working there a short time and had poor English asked if it were true about the girls leaving. The claimant was not aware that she was going home at Christmas and there was no mention of there being no job for her if she did go home. In relation to E who had an accident in the factory the claimant turned off the machine in question and called for help. When the doctor arrived and having attended the injured person he asked the claimant if she would show him the machine. Having seen it the doctor made a comment regarding the machine and the director came in and asked them to move out of the area. The doctor felt that the director was not happy with him seeing the machine. The claimant did not suggest to the doctor to go and see the machine.

On 14th December 2005 at the end of the working day the claimant was called to the directors office and she asked a colleague to accompany her. She was handed a letter by and the director said that everything was explained therein. The claimant said she was expecting it from the way she had been treated and that one is not encouraged to challenge or ask questions. She and other employees knew they were finished in the factory. The letter stated that she was dismissed for gross misconduct on 14th December 2005. She also told the Tribunal of her efforts to obtain alternative employment.

In cross-examination witness said she was upset in relation to the original supervisor being made redundant but she was not aggressive and demanding.

In answer to questions from Tribunal members witness said that she opened the dismissal letter when she got home.

Determination:

The Tribunal finds that the respondent had no formal grievance procedures in place and dismissed the claimant for gross misconduct by letter dated 14th December 2005. The Tribunal finds that the misconduct did not amount to gross misconduct. The dismissal was unfair however the claimant contributed substantially to her dismissal. Taking this contribution into account the Tribunal make an award of €6,244.00 under the Unfair Dismissals Acts, 1977 to 2001.

Under the Minimum Notice and Terms of Employment Acts 1973 to 2001, the Tribunal awards the Claimant the sum of €1,256.00, as compensation in lieu of notice.

The Tribunal makes no award under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

