

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

WT425/2005
MN934/2005
UD1248/2005

against

3 Employers

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: Ms N. O'Carroll-Kelly BL

Members: Mr J. Goulding
Mr A. Butler

heard this claim at Wicklow on 2nd October 2007

Representation:

Claimant :

Padraic Lyons, B.L., instructed by M.D. O'Loughlin & Company, Solicitors, Suite 2
Woodland Office Park, Southern Cross Road, Bray, Co. Wicklow

Respondent :

In Person

The determination of the Tribunal was as follows:-

The fact of dismissal was in dispute in this case

Claimant's case:

The claimant commenced her employment with the respondent as a chiropractic assistant in July/August 2001 initially on a casual basis and the following May she was offered three days per week. Her duties included assisting the chiropractors, opening up the premises and receptionist work. Her main role however was facilitating the chiropractors and patients. Different chiropractors

worked there during her employment and she always gave 110% to her job, was dedicated and honest. She also got on very well with the patients and there were no complaints about her work. JC was the practice manager and Mr D was the proprietor. Mr D came to the practice occasionally and JC came out every Monday to pay the wages and collect the takings. The claimant worked a back week. She enjoyed her job and working with people and felt totally capable. She worked fourteen hours per week over two days, Tuesday and Wednesday. The other receptionist wanted the claimant to change her days to Tuesday and Thursday and to work twenty hours. The claimant did not think this was a good idea. Her colleague worked for Mr L and the claimant for Mr C. These two chiropractors got on very well in the beginning and then the claimant witnessed fighting between them in the office. Both of them questioned every patient that was put through for one or the other of them. On one occasion Mr L telephoned the respondent and was annoyed at the way the patient numbers were being divided out. One of the chiropractors walked out leaving patients waiting and some of these choose not to attend the other chiropractor in his place.

The claimant noticed that patient numbers were dropping in the clinic and in particular that the patients of one of the chiropractors were cancelling their appointments. On 14th July 2005 a meeting was held to discuss ways to bring up the patient numbers. It then transpired that the respondent left a message on the claimant's telephone saying there had been a falling out at the clinic and that he had to let one of the chiropractors go. The next day the claimant received a telephone call from the other receptionist stating that the respondent had changed the locks on the doors and that she, the claimant was to be made redundant. The claimant arranged a meeting with the respondent on 9th August 2005 and she was given three options: to resign, take redundancy or remain on indefinite unpaid suspension. She was given twenty-four hours to make up her mind. She wrote to the respondent on 10th August 2005 and she received a response dated 16th August. In this letter the respondent referred to the breakdown of the system, that warnings had been issued, and told the claimant she would not be returning to work until he had prepared a new training manual and that she could take paid holidays or unpaid leave. The claimant felt that her character and integrity were being questioned in this letter. The claimant gave her response by letter dated 19th August and she mentioned a suggestion from a former doctor of the clinic regarding a communications book. She then received an undated letter from the respondent wherein he referred to the fact that he could not trust the employees to follow his instructions.

All she could say was that somebody was trying to discredit her from the allegations made by the respondent. She had never received any warnings. In relation to re-training she could not imagine what training she would need unless the job was going to change completely. The claimant used to bring home the clinic laundry and when she went to return it she was handed at reception an envelope which had enclosed two weeks wages. She did not receive notice or holiday pay. The claimant was concerned about telephone calls from patients wondering if she was okay. She lived in the community and she discovered that the receptionist told them she had to be discreet as to why she, the claimant was not at work which made it look like there had been some wrong doing on her part. The claimant herself told the patients on the street about the three options which were put to her. Another undated letter was opened to the Tribunal wherein the respondent implied that the claimant had removed cheques from the practice which she felt was a dreadful slur on her character. By letter dated 24th August 2005 the claimant felt she had no option but to tender her resignation. She went to her doctor who prescribed medication for her and she was on this for a year. She was on suspension until the end of August and as far as she was aware none of the other staff were suspended. On 30th August the respondent wrote a letter asking that she be removed from the payroll yet he was asking the claimant to come back for training from 5th September. She was paid for the first two weeks of her suspension.

The Tribunal then heard of the claimant's efforts to obtain alternative employment. The twenty hours with the respondent suited her as her mother was ill and she needed to have time to visit her in the country.

In answer to questions from Tribunal members the claimant stated that she did not receive a contract of employment when she started and there were no guidelines for dispute resolution. In relation to the division of the work between the two chiropractors she said that pre-existing patients would have a preference for one or the other, however if somebody came in and wanted a doctor there and then she would assign them to whoever was free. Her belief was that the chiropractors got 50% of the takings. She never received any warnings.

Respondent's case:

The respondent runs a number of other businesses and he would only get to the chiropractic clinic a couple of times a year. He had a general manager who ran the business for him. In 2005 the clinic got two new doctors and everything was going okay until it was brought to his attention that there was unrest. There was a meeting in May 2005 in relation to the issues between the doctors. They were working on a % of the takings. He has had nineteen other clinics and one hundred doctors and there were no problems previously. He explained how the patients were allocated between the doctors in that if no direct reference they were shared. This was suggested to the doctors and he assumed things were okay. When he received a call about a month later about patient numbers he went down to the clinic. The numbers should never be up or down and he felt this was down to poor communication. He went to the clinic again around mid July to discover that there were two factions and a row had developed over the scheduling of patients.

There had always been a training manual and the previous one was possibly ten years old. At one of the meetings a row had developed between the claimant and one of the doctors and as a result he issued a letter to the claimant, the manager and the two doctors. He felt it was very unprofessional.

About four weeks later another row developed in the clinic where it looked like one of the doctors was going to be physically abusive towards the staff. He put the two doctors out and suspended the two secretaries in order to have time to decide what to do. He said that the clinic was in a shambles and he felt that everybody was to blame. Until then the manager was responsible for staff training and if a new doctor came in they would tailor their training with their secretary. He decided to do a manual and when he took advice he was told to re-train everybody. He then set about re-training all the staff in all his clinics.

In cross-examination witness said that the claimant was suspended as a penalty. The clinic had been left in ruins and patients were distressed. The girls, including the claimant were as much a part of the unrest that developed as were the doctors. Regarding the training manual the claimant was not ready to be trained until 5th September but she had resigned prior to then.

In answer to questions from Tribunal members witness said that when he gave the claimant the three options his intention was to move everybody out for a couple of weeks and then to re-group. He never told the claimant she was fired. There was never a problem with the claimant prior to the two new doctors coming on board. The claimant was paid during all of the suspension bar one week but he did not make this clear to the claimant.

The other receptionist told the Tribunal that when the problem arose with the two doctors the

respondent said that if the matter was not resolved he would have to close the clinic. She also received a letter to say she was suspended. One of the doctors rang and was very abusive towards her and she was frightened as he knew where she lived. As far as she was concerned the claimant was not sacked. She subsequently returned to work for the respondent.

In cross-examination witness said that she was also not paid for one week. She was not aware of the claimant receiving warnings. When patients enquired as to where the claimant was she did not think it was any of their business. She did not think the claimant was treated different from anyone else.

In answer to questions from Tribunal members she said that when she returned to work she did undergo training. The new manual is basically the same as the previous one. The three options which were put to the claimant were not put to this witness.

Determination:

The claimant has discharged her burden in relation to her claim for constructive dismissal and the Tribunal is satisfied in relation to the evidence given and documentation submitted that she was constructively dismissed and on that basis the Tribunal award the claimant the sum of €6,812.00 under the Unfair Dismissals Acts, 1977 to 2001. No award is being made under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

