

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO.  
UD1284/2006, MN848/2006

Against

Employer

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. McGrath

Members: Mr E. Handley  
Mr N. Broughall

heard this claim at Naas on 1st November 2007 and 18th January 2008

### **Representation:**

Claimant : Ms Claire Walsh B L instructed by  
Rollestons, Solicitors, Church Street, Portlaoise, Co.Laois

Respondent : Ms Niamh McHugh B L instructed by  
John Duffy & Co., Solicitors, Main Street, Monasterevin, Co. Kildare

The determination of the Tribunal was as follows:

### **Respondent's Case**

The owner of this crèche and Montessori outlined the reasons for the claimant's dismissal in October 2006. Those reasons included reported bullying of staff, underperformance at work, her possible involvement in missing money, undermining of the witness's position, and general disregard of her duties. The witness added that her decision to terminate the claimant's employment was based on the respondent and children's welfare.

The witness referred to another staff member who on at least two occasions was unable to report for work citing bullying from the claimant. The claimant was also reported to have given "the fingers" to that employee in front of the children. On another occasion the mother of a child attending the respondent called saying her child did not want to go there any more due to the behaviour of the claimant. Following that incident the claimant's attitude changed to such an extent that she became too casual with the children and she no longer properly supervised them.

A former employee said she was initially friendly with the claimant at work but that situation adversely changed due to the claimant's negative behaviour towards her. The witness finally reported the claimant's alleged bullying of her to the respondent following an incident when the claimant gave her the "fingers".

The mother of the owner had a managerial role at the crèche and assisted her daughter in its operations. The witness described the claimant as a manipulative person who tended to "run down" the staff. She regarded the claimant's work and attitude in her latter months as less than satisfactory.

The mother of the child mentioned in the owner's evidence said that she was extremely happy with the level of care from the respondent. She had never made a complaint about the claimant and had "sorted out a small incident" admirably with the claimant. She acknowledged her undated letter entitled To Whom it may Concern where she praised the claimant and her work subsequent to her cessation of employment.

### **Claimant's Case**

The claimant commenced employment at the respondent's in March 2004. There was "no problem" with her employment up to the middle of October 2006. On Sunday 16<sup>th</sup> October 2006 the witness sent a text to the owner of the crèche indicating that due to ill health she was unable to report for work the next day and possibility for longer. She met the owner and her mother the following Wednesday evening by appointment at the respondent's. There the claimant was handed an undated letter signed by the owner that included the issuing of a written warning. That letter also listed four issues of concern to the respondent about the claimant's work. These were a breach of confidentiality, creating a negative working environment, contributing to the stress of a child, and behaving in an intimidating manner towards another member of staff. The claimant's request to have her partner present at that meeting was denied.

The claimant attended for work the following morning without incident and again met the owner and her mother around lunchtime that day. At that meeting the owner told the claimant she was being fired. The claimant was very surprised at that development, as she had not been told at any time that her job was in jeopardy.

While accepting she spoke about wages to other staff the claimant did not accept this issue was a confidential matter. She was shocked at the allegations of bullying against her and added that the "fingers" incident did not happen. She denied causing stress to a particular child and rejected the notion that she allowed and tolerated high noise levels among the children and that she allowed and tolerated a disorganised structure to the children's activities. The witness did not know why the owner gave her a written warning or the reasons for her dismissal.

### **Determination**

The applicant worked with the employer for two years and seven months. There is no doubt that a number of matters had arisen which caused concern to the employer and that there was a mounting tension between employer and employee which resulted in the employee being called into the workplace on the 18<sup>th</sup> of October 2006 to receive a written letter of warning. Procedurally there can be no difficulty with this and the employer was operating within their rights.

The Tribunal accepts that the employer gave the written letter in the spirit of wishing to clear the air and set out her position. However, the Tribunal believes having considered the evidence that a number of issues are somewhat overstated. For example the issue of the parent “complaint” seems to have been blown out of proportion and the Tribunal is grateful that the parent in question came in to give evidence in this regard. Another issue concerned the alleged bullying. The Tribunal heard the evidence of a co-employee who described a difficult working relationship with the applicant. It is noted that this employee never brought a formal complaint while the parties were working in the respondent premises.

In any event, and somewhat crucially, the employer was not conducting an investigation into bullying and the content of the letter seemed to be accepted as fact with no right of reply being given to the applicant. The applicant asked that her partner be brought in as a witness/representative at the meeting of 18th October and was refused this request. Perhaps in circumstances where the contents of the letter of warning was not up for discussion one way or another the bringing onto the premises of a third party was unnecessary but it was the only request made by the applicant and was not unreasonable.

Following receipt of the letter, the applicant attended for work the next day. There can be no doubt that she would not have been happy that day but was present for work and doing her job. The suggestion seems to be that the applicant deliberately allowed children in the classroom get out of hand on her last day. For her employer, this was the last straw and she decided to let the applicant go. Again this was done without any right of reply. The employer must have known that the employee was upset by the meeting conducted the day before. The employer has said in evidence that she hoped that their relationship would improve in the aftermath of the meeting but in reality did nothing to assure the employee that she was still a valued member of staff.

Perhaps the employer was right in saying the employee’s heart “was no longer in her job”. The decision to terminate the employment cannot be separated from the letter of warning and in circumstances where the employee was afforded no right of reply and no opportunity to demonstrate willingness to improve-the termination is deemed to be unfair.

Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2001 succeeds and the claimant is awarded €7,500.00 as compensation under those Acts.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 is dismissed as that outstanding statutory payment was made by the respondent.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

