

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO. UD284/2007

Employee

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney

Members: Mr. J. Redmond
Dr. A. Clune

heard this claim at Ennis on 7th November 2007

Representation:

Claimant:

Mr. Gearoid Howard, Crimmins & Company, Solicitors, Dolmen House,
Shannon Town Centre, Co. Clare

Respondent:

Pendred & Co., Solicitors, 2 Bally Casey Park, Shannon, Co.Clare

The determination of the Tribunal was as follows:

Respondent's case

The respondent (AK) is the managing director of a small company, which currently has two employees; i.e. himself and his wife. In the past he had up to five employees. In November 2006, the claimant was also an employee. The business went downhill in 2006. Turnover was €5million in 2005, but was down to €900,000 in 2006. Two employees left before the claimant. In November 2006 AK gave the claimant her redundancy notice, with four weeks notice and a letter of reference. He told her the reason was that the business was doing badly. He allowed the claimant time off work to look for another job. As the Christmas break approached the claimant was upset at losing her job and on 12th December 2006 AK told the claimant he would extend her notice for a while and see if things picked up after Christmas. However, business didn't pick up and, on 8th January 2007, AK told the claimant that he would have to let her go and extended her notice to 9th February 2007. He did

not give her written notice at this point, but made a note in his diary. The claimant understood the situation. During the week of 5th February 2007, AK asked the claimant to cancel the standing order for her salary and to work out how much AK owed her. The claimant did this. She was unhappy that AK had not intended paying her for a week when she was sick in January, so he changed his mind and paid her for her sick leave. After the claimant left, AK outsourced accounts to a company in England for one tenth of the cost of employing the claimant.

Claimant's case

The claimant agreed that AK had given her redundancy notice in November 2006 with a notice period which was to end on 15th December 2006. However, in early December AK told the claimant that she could stay on and he would look at the situation again in a few months. He did not give her any notice on 8th January 2007. On 28th January the claimant was unwell and took a week off work. On 1st February her salary did not go into the bank. She asked AK if there was a problem with the bank. He replied that he would speak to the bank. On Thursday AK asked the claimant if she could come into work for a few hours on Friday but she refused. On 5th February 2007 the claimant returned to work after her week of sickness and the atmosphere in the office was quiet. She asked AK about her wages for the previous week. AK was annoyed with her for not coming in on the previous Friday. He raised his voice to her and said her attitude was dreadful and that if he had been sick he would have come in. He implied that he didn't believe she was sick, as he had seen her at the shops during the week. The claimant had been out to buy groceries during the week when she was sick, as she had no one else to buy them for her. AK then said, "This is no good. You'll have to go". The claimant asked him if he was giving her a week's notice. AK said he was. She asked him did he want her to work her notice. He replied yes, he was paying her, he wanted her to work. The previous week's wages were paid to the claimant on Wednesday or Thursday of her final week. She left on 9th January 2007. The claimant began work in a new job on 22nd March 2007. She is earning more in this job than she did working for the respondent.

Determination

The Tribunal finds that there was a dismissal and that it was unfair in that it was not by reason of redundancy in February 2007. The Tribunal has taken into account the events of the week of the 5th February 2007 and awards the claimant €2,000.00 under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

