

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

MN82/2007

CASE NO.

against
Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr M. Murphy
Ms. K. Warnock

heard this claim at Navan on 20th December 2007

Representation:

Claimants(s) : In person

Respondent(s) : Murphy Coady & Company, Solicitors, Commons Road, Navan, Co. Meath

The decision of the Tribunal was as follows:-

Claimant's Case:

The claimant gave evidence. She explained that she had commenced employment with the respondent on September 5th 2005.

On August 29th 2006 she attended her doctor and was 10 minutes late for work. On her arrival to work she tried to explain to her Manager why she was late but he walked away from her. She continued to perform her duties. Around 12p.m. some customers arrived into the premises. The brother of the owner of the respondent business took their order. The Manager approached her and told her to take their order. She tried to explain that their order had been taken but he insisted she take it. She approached the customers but, as she was already aware, their order was already taken. The Manager asked had she taken the order and she replied that it was already done. He shouted at her and said that she should have taken it. She asked what she should do and he told her where the door was. The owner of the business and some customers were present. She again asked what she was to do and he again told her where the door was. The owner approached her and she told him what the Manager said to her. He replied that "it wasn't the time" and he would speak to the Manager later. She left very upset and contacted her daughter. Her daughter contacted the owner and was told that there was no job to go back to and not to enter the pub anymore.

On cross-examination she stated that she had worked up the 10 minutes she had be late for work. When questioned, she said that she had not approached the owner of the business after the incident with the Manager. When asked, she said that she had not taken an extended break that day. She also stated that she had not been obstructive or unhelpful that day.

The claimant's daughter gave evidence. She explained that she had contacted the owner of the business on receipt of a call from her mother, the claimant. She was informed that her mother had walked out of the premises on August 29th 2006. She explained what her mother had told her of what had occurred and that her mother wanted to return to work. She was told that there was no job for her mother and she was not to enter the premises again. When she informed the owner that she did not accept this, he said he would speak to his solicitor.

On cross-examination she said she had not been present in the respondent's premises on the day of the incident. She said that the owner of the business had said that he had not witnessed anything on the day in question.

Respondent's Case:

The Assistant Manager (the person the claimant had said was the Manager) gave evidence. He stated that there was an incident book on the premises.

The claimant had not arrived to work until 10.25 a.m., 25 minutes late, on the day in question. When she explained where she had been, he told her that there was no problem. At around 11 a.m. the claimant took a break for a half hour but he let the matter go. While on his break at 12 p.m. some customers arrived, the claimant was behind the counter talking to other staff. He got up and asked her to take their order. She approached them but was told their order was already taken. She told the witness and asked what the problem was. He told her that he was not happy with her performance, being late, taking breaks and that she would have to improve. She told him that she worked as hard as anyone else and did he want her to leave. He replied that he wanted her to improve her work standards. The claimant went to the owner of the business, got her jacket and left. The owner was not happy.

On cross-examination he stated that he had told the claimant that he had wanted the claimant to sit down with him to discuss work standards. He never told her where the door was. He said that the claimant had been rude towards him on the day in question.

When asked by the Tribunal he said that the disciplinary procedure in place was to call the person aside and discuss the problem with them. When asked, he said that he had not followed the claimant after she left that day. When asked, he said that the owner of the respondent business had informed him that the claimant's daughter had contacted him about the matter. When asked, he said that he felt it had constituted gross misconduct taking previous incidents into account.

Determination:

Having heard the evidence adduced by both parties the Tribunal finds in favour of the plaintiff and that loss having been established awards the claimant the sum of € 439.90 (this being one week's gross pay) under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)