

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD1222/2006

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. McAveety

Members: Mr. T. Gill
Mr. J. LeCumbre

heard this claim at Longford on 25 July 2007 and 22 January 2008

Representation:

Claimant:

Mr. Leo Branigan, Leo F. Branigan & Co. Solicitors,
6 New Street, Longford

Respondent:

Mr. Fergus A. Feeney, Solicitor, The Legal Centre,
Ballinalee Road, Longford

The determination of the Tribunal was as follows:

The claimant was interviewed for a position, advertised in the local newspaper in February 2005, as an experienced full-time secretary. The respondent's position is that the claimant, along with nine other interviewees, was told at interview that the job involved some bookkeeping work. The claimant's position is that she telephoned the respondent in the period between lodging her application and the interview, spoke to the mart manager (MM) and was told that no bookkeeping was involved in the advertised position. The claimant's position is further that if she had been told that there was a bookkeeping aspect to the job she would not have attended for interview. The interview was conducted by MM, the operations manager (OM) and the respondent's accountant. The claimant commenced her employment on 29 March 2005. Some two or three weeks into the employment the claimant became aware that MM would be going on maternity leave in September 2005.

Virtually from the outset the claimant was required to do bookkeeping type work involving the totting of figures in the respondent's hand written summary book and from that time the claimant

said that she was “not a natural with figures”. The claimant’s predecessor did not work on the summary book. There was no problem with the other aspects of the claimant’s work. MM assisted the claimant in any problems the claimant might have with the summary book. When MM went on maternity leave the claimant assumed more responsibilities with regard to the summary book. The claimant experienced such difficulty with this aspect of her work that she visited MM at home, soon after the birth, probably in early October 2005, taking the summary book and other paper work to MM as she felt stressed and under pressure about the situation. From that time MM took on the task of completing the monthly returns in the summary book.

MM returned from maternity leave in January 2006 and on 24 January 2006 MM and OM called the claimant in to a meeting at which various areas of the respondent’s dissatisfaction with the claimant’s performance were raised. Matters raised were the claimant’s use of her mobile phone while at work, reading a newspaper in view of customers, time keeping, upkeep of files and her lack of understanding of the respondent’s bookkeeping. Following on from this meeting the claimant received an undated letter, signed by OM, which foreshadowed a further review of the claimant’s performance on 1 March 2006. No such review took place; it is common case that the claimant’s performance improved.

In the following months it is the respondent’s position that MM spoke to the claimant about deficiencies in her performance of bookkeeping duties. The claimant’s position is that from time to time she asked MM for assistance and MM obliged. Having sought legal advice on the matter, MM wrote to the claimant on 15 June 2006 and, referring to the undated letter which followed the 24 January meeting, told the claimant that her performance was not satisfactory. She was required to attend a meeting on 21 June 2006 to discuss: -

- Her capability and/or competence to do the job she was employed to do
- Her conduct in relation to time keeping, use of mobile phone and reading of newspaper when she should have been working
- Any other matters arising from the first two items

The claimant brought along a shareholder and former manager of the respondent to accompany her. MM objected to this person being in attendance at the meeting and the claimant agreed to the meeting proceeding on an informal basis. At this meeting the claimant again commented that she was “not a natural with figures”. She suggested that she perhaps ought to find a bookkeeping course but this suggestion was rebuffed by MM and OM. The claimant’s position is that MM put it to her that it “might be a good idea if she looked at the situations vacant”. In a letter drafted jointly by MM and OM on 21 June 2006 after this meeting and signed by MM dated 23 June 2006 the claimant was given one month’s notice.

Determination:

The Tribunal is not satisfied that the claimant was made aware of the true nature of the job at the interview stage. No evidence was adduced to show that the claimant received, or was offered, any training, other than on the job training, in the bookkeeping duties that she was required to fulfil. MM told the Tribunal that she was not happy with the claimant's performance at the start of her maternity leave, yet no action was taken against the claimant until 24 January 2006. At no stage until during the meeting of 21 June 2006 was the claimant warned that her continued employment was under threat. At no time was the claimant furnished with a contract of employment, job description, terms and conditions, disciplinary or grievance procedure. For all these reasons it must follow that the claimant was dismissed without any, or fair, procedures and that the dismissal was unfair. Having carefully considered the claimant's attempts at mitigation of loss the Tribunal awards €11,500-00 under the Unfair Dismissals Acts, 1977 to 2001

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)