

EMPLOYMENT APPEALS TRIBUNAL

Appeal Of:
Employee

Case No.
UD12/2007

against the recommendation of the Rights Commissioner in the case of:
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S C

Members: Mr. P. Pierson
Ms. K. Garvey

heard this appeal at Portlaoise on 17th December 2007

Representation:

Appellant: Ms. Sarah Walsh B.L. instructed by Ms. Siuna Bartels and Ms. Susan Harrison,
Greg O'Neill, Solicitors, Suite 109, The Capel Buildings, St. Mary's Abbey,
Dublin 7

Respondent: Mr. J.J. Fitzgerald, J.J. Fitzgerald & Co., Solicitors, Friar Street, Thurles,
Co. Tipperary

This case came before the Tribunal by way of an employee appealing against Rights Commissioner's Recommendation ref: r-035381-ma-05/JH.

The determination of the Tribunal was as follows:

The Tribunal heard dismissal was in dispute between the parties.

Claimant's Case:

The claimant gave evidence with the assistance of an interpreter. The claimant went on annual leave on the 24 May 2005. The claimant returned to work on the 10 June 2005. The supervisor told her there was no work for her at that time but to ask again in a few days time. The claimant and her friend spoke to the respondent after this conversation. The respondent told the claimant there was no work for her, as the supervisor did not like her. The respondent told her that he was terminating her employment.

The claimant and her friend met with the respondent on the 12 June 2005. The respondent again

told the claimant that her employment was terminated because the supervisor did not like her. The claimant received her P-45 two weeks later. It was dated 31 May 2005. The claimant established her loss.

During cross-examination it was put to the claimant that she had complained about a number of matters including wages and as she was unhappy she left her employment of her own accord. The claimant accepted she had raised a number of issues with the respondent but denied that she had left his employment of her own accord.

A witness for the claimant told the Tribunal she had spoken to the respondent on the claimant's behalf on the 12 June 2005. The respondent told her the claimant's employment was ended because the supervisor did not like the claimant.

Respondent's Case:

Giving evidence the respondent told the Tribunal the claimant had been a problematic employee. The claimant refused duties and instructions and other employees had started to do the same. The respondent gave the claimant verbal warnings about her behaviour on a number of occasions.

When the claimant was on holidays the supervisor told the respondent that there was a good atmosphere in the claimant's absence. The respondent informed the claimant of this on the 10 June 2005. He told the claimant that her behaviour before going on holidays could not be tolerated and going forward she would have to carry out the duties asked of her. The claimant walked away from the respondent. Two days later the claimant requested her P-45.

During cross-examination the respondent accepted that the claimant's P-45 was incorrectly dated. The respondent said the claimant did not complain to him about employment matters including her rate of pay. The respondent did not make a written record of the verbal warnings given to the claimant.

Determination:

The Tribunal sets aside the recommendation, ref: r-035381-ma-05/JH, of the Rights Commissioner for the following reasons. We accept the claimant's evidence that she was dismissed because her supervisor did not like her. This is obviously an unfair dismissal.

In assessing compensation we considered the claimant's actual loss and had regard to the national minimum wage. Under the Act compensation is to be "just and equitable having regard to all the circumstances". The Tribunal awards compensation in the amount of €10,000.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)