

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD100/2007

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Mr J. Browne
Mr A. Butler

heard this claim at Wexford on 12th March 2008

Representation:

Claimant : Liam Hipwell & Co., Solicitors, 18 Monck Street, Wexford

Respondent : Ms Dorothy Donovan B L instructed by
McDonald, Solicitors, 68 South Main Street, Wexford

The determination of the Tribunal was as follows:

This matter came before the Tribunal on the 12th of March 2008 for determination. Evidence was heard on behalf of the Respondent from a Human Resources (HR) Consultant engaged by the Respondent. She was familiar with the Applicant and was aware that the Applicant had worked for the Respondent in a part time capacity before she was employed on a full time basis. Initially, there were some difficulties. The witness felt that the Applicant was fine while being supervised, but from time to time her supervisor would complain that she couldn't get her to work. The owner of the Respondent moved her to another shop in Wexford, which is also owned by the Respondent. The HR Consultant gave evidence that she had reason to speak to the Applicant on a number of occasions. The principal complaints were that she was taking extra long breaks, she was wandering from shop to shop and chatting with other staff members, and that she was regularly on the phone. The witness gave evidence that on the 16th of July 2006 she gave the Appellant a warning with regard to her future conduct. She gave evidence that she gave her a written warning with regard to her conduct on the 27th of July 2006 and a further written warning on the 2nd of August 2006. These documents have been produced. The witness however acknowledged that though she had prepared these written warnings that she in fact never gave them to the Applicant. Finally, the Applicant injured her back in August 2006. She was out of work for a few days and on her return on the 22nd of August 2006 she was dismissed from her employment. Reasons given for her dismissal were as follows:

1. “Leaving the premises during your working hours to go to other shops without permission despite warnings from management”
2. Failing to complete duties as expected from you in your designated shop despite warnings from management.
3. Extending official break time without permission to the detriment of the shop and staff despite continuous warnings from management.
4. Behaving in an unacceptable manner to our customers despite warnings from supervisors and management.
5. Behaving in a destructive manner to staff and supervisors in the company despite warnings from management.
6. Behaving in such a way as to cause unfair distress to your colleagues by continuous about incidents you were not involved in despite warnings from management.
7. Failure to follow instructions over a period of time from your supervisor/senior staff on duty despite all previous warnings.
8. Ignoring all company’s rules and regulations regarding use of company’s telephone despite previous warnings and ignoring company’s rules and regulations regarding the health & safety policy despite instructions and supervisor training.”

The witness also produced a series of hand written notes, which she herself made recording various meetings that she had with the Applicant. The HR Consultant struck the Tribunal as being a frank and honest witness and acknowledged that she felt that she had been remiss in not ensuring that the letters of warning had been handed to or sent to the Applicant in some fashion. She did acknowledge that the Applicant never received the notices. She also conceded that there was no formal grievance procedure in operation within the firm.

Evidence was given by the Applicant who indicated that during the course of her employment with the Respondent she had been moved between the firm’s various shops. She would also have to cover staff breaks in other shops. In August 2006 three members of staff were dismissed for dishonesty. Everyone in the shop was talking about these incidents. The HR Consultant approached the Applicant and remonstrated with her for talking about the incidents and told her that she shouldn’t do so. The Applicant said that she had no idea that the human Resource consultant was keeping written records of her employment and said that it was never conveyed to her that anything that she was doing could prejudice her employment. On the 27th of August that C consultant met with the Applicant and said to her that she was still gossiping and she asked her to sign a piece of paper, which the Applicant said she refused to sign. She was not given any copy of same. At this meeting she was dismissed from her employment.

A former work colleague and a former supervisor of the Applicant gave evidence on behalf of the Applicant.

Having considered the evidence the Tribunal determines as follows:

The Respondent herein acknowledged that there were no procedures in place in relation to disciplinary or complaint issues. Furthermore, the notices that the HR Consultant prepared were never given to the Respondent. There is no doubt that the HR Consultant did have meetings with the Respondent and it is difficult to entirely accept that she was not, to some extent alerted to the fact that she was not giving satisfactory service to her employer, however as the information was never formally conveyed to her the Tribunal finds that the Respondent was procedurally remiss and

consequently that the dismissal was unfair.

The Tribunal finds that compensation is the most appropriate remedy and awards the Applicant the sum of €1200.00 under the Unfair Dismissals Acts 1997 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

