

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD193/2007

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony B.L.

Members: Mr. B. O'Carroll
Mr. J. LeCumbre

heard this appeal at Athlone on 25 March 2008

Representation:

Claimant:

Mr. John Carthy, Divisional Organiser, Mandate Trade Union,
Western Division, Mary Street, Galway

Respondent:

Mr. Duncan Inverarity, BCM Hanby Wallace,
88 Harcourt Street, Dublin 2

The determination of the Tribunal was as follows:

The claimant worked for the respondent from 26 January 2000 in one of their stores. The employment was uneventful until 7 February 2005 when the claimant became unfit for work as a result of a medical condition. The then human resource manager (THR) for the store wrote to the claimant on 8 April 2005 and arranged to meet the claimant to discuss her condition. THR and the textile manager (TM) met the claimant on 14 April 2005. On 21 June 2005 the claimant's GP wrote a letter certifying that the claimant was due to see a consultant in August 2005 and would be unlikely to be fit for work until October 2005 at the earliest. On 22 June 2005 THR wrote another letter to the claimant and met her on 24 June 2005 to discuss her condition. TM wrote to the claimant on 1 October 2005 to arrange a meeting to discuss her absence from work. TM wrote to the claimant again on 16 January 2006 to arrange a meeting to discuss her condition. This meeting took place on 27 January 2006. TM wrote to the claimant again on 29 March 2006 to arrange a meeting to discuss her condition. This meeting took place on 7 April 2006.

On 26 April 2006 the store manager (SM) wrote to the claimant to arrange a meeting to discuss her

medical condition and to establish a likely return to work date. The claimant was encouraged to discuss the matter with her GP. On 2 May 2006 the claimant's GP wrote a letter certifying that the claimant remained unfit for work and would be unlikely to return within three months. The claimant did not meet SM at this stage. On 7 July 2006 the store personnel manager (PM), who had assumed her responsibilities in March 2006 but was not involved in the 7 April 2006 meeting, wrote to the claimant that the respondent was unable to keep the claimant's position open and that unless she was back in the workplace by 6 August 2006 her employment would be terminated. On 28 July 2006 the claimant's GP wrote to PM, acknowledging sight of PM's letter of 7 July 2006. GP stated that it was not possible to give a return date at that time and that he felt it was reasonable to keep the claimant's position vacant at least until 2007. On 9 August 2006 PM wrote a letter of dismissal to the claimant.

The respondent's position was that PM took the view that the claimant would never return to work and this left PM with no option but to dismiss the claimant.

The claimant's position was that the first time she had felt that her job was under threat was when she received PM's letter of 7 July 2006 and, accordingly she had then been denied fair procedures in that she had not been given the opportunity, prior to her dismissal in August 2006, to present her case as to why she should not be dismissed.

Determination:

While there was a considerable amount of evidence in this case about the role of disciplinary procedures in the dismissal, the Tribunal is satisfied that those procedures were not relevant to the determination of this case. PM told the Tribunal that, when taking the decision to dismiss the claimant, it was her view that the claimant would not return to work. The claimant was never examined by a doctor acting on behalf of the respondent. The only medical opinion referred to by the respondent was that of the claimant's GP with which the respondent concurred. That opinion did not state that the claimant would not be able to return to work. In those circumstances the Tribunal finds that the claimant was dismissed on foot of an assessment made of the claimant's condition by PM, an assessment that PM was unqualified to make. It must follow that the dismissal was unfair. In assessing the remedy the Tribunal notes that the claimant is still, some three years after she last worked, unfit to resume work and as such has suffered no loss attributable to the dismissal. There was no evidence as to when or if ever she would be fit to resume work. Accordingly the Tribunal awards €1,120-00, being four weeks' pay, as provided under section 7(1)[c](ii) of the Unfair Dismissals Acts, 1977 to 2001

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)