

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
Employee

CASE NO. UD465/2007
MN327/2007

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N O'Carroll-Kelly BL

Members: Mr M Kennedy
Mr P McAleer

heard this claim at Monaghan on 9th May 2008

Representation:

Claimant: Wilkie & Flanagan, Solicitors
8 The Hill, Monaghan, Co Monaghan

Respondent: McEntee & O'Doherty, Solicitors
20 North Road, Monaghan

The determination of the Tribunal was as follows:

Respondent's Case:

The claimant was dismissed as a result of an argument on Monday 26th February 2007 with the accounts person (AP). The claimant had sought a letter from the company to apply for a mortgage, which had been supplied. The letter stated that the claimant worked full-time and earned €560-590 per week. When the mortgage broker phoned AP, on Friday 23rd February 2007, looking for corresponding payslips, she said she could not supply them as the claimant only worked part-time. The claimant came to the office the following Monday and asked to speak to AP. The claimant then verbally abused the AP using bad language, and accused her of being stupid and of having ruined her chances of getting a mortgage.

MD phoned the claimant on Tuesday 27th February and asked her to report directly to him on her arrival the following day. During the meeting on Wednesday 28th February the claimant accepted there had been an argument with AP but denied using bad language. As the claimant was already on a written warning, MD suspended her. The claimant said she wouldn't sew another stitch for him again. The claimant returned two days later with the letter for the mortgage broker and said she could cause MD problems with it. MD told her that she would be dismissed. MD dismissed the claimant via letter on 9th March 2007. The claimant was paid €2088.00 in respect of

four weeks wages, three and a half days holidays and a further four weeks pay as a gesture.

The claimant had been previously given a written warning after making a complaint of bullying against two co-workers, AF and MM. MD had written to the three parties involved, on 2nd February 2007, and said if there were any further problems it would lead to suspension or dismissal. MD did not investigate the bullying allegation, but put the claimant and AF on alternating shifts. MD knew the situation and couldn't say who was to blame. MD became aware of difficulties between the claimant and AF in 2000 and had periodically spoken to them about their behaviour. MD wrote to the three staff members involved and warned them that any further harassment would lead to suspension or dismissal.

MD refuted that the claimant worked full-time or that she received a cash payment of €220 in addition to her wages of €240 paid by cheque. There were no records of what hours were worked as company clock cards were destroyed after the wages were paid. The claimant had a break in service when the company was liquidated in the late 1980s. MD had previously owned the business with his brother until it was liquidated in 1988-1989. There was a gap of 18 months between that company closing and the current company being set-up by MD. The claimant had commenced her employment with the company in 1993-1994. There was no written contract of employment. There was no grievance procedure, though MD believed he was very approachable if there was any problem, he had rectified the situation with regard to contracts of employment for current staff.

Claimant's Case:

The claimant had worked for the company since 1983 as a machinist. There was no written contract of employment. The company had gone into liquidation in 1987 but never closed and she had continued to work for the company. The claimant had worked full-time since the end of 1990 except for quiet periods. The claimant was paid in cash and by cheque; receiving €240 by cheque and €220 in cash per week. The claimant's brother-in-law, who was an ex-employee of the company, also gave evidence to this effect. The extra payments were paid for completed pieces. The claimant had a long-standing dispute with another member of staff, AF, over the piecework as AF only did cushions, which were quicker, and she could therefore make more money.

AF had always been difficult to work with, but things had become more difficult since Christmas when it was suggested that the claimant might become a supervisor. The claimant believed that either she or AF would be dismissed due to their ongoing problems and that MD was just waiting for something to happen in order to dismiss one of them. The claimant had agreed to work reduced hours as MD had led her to believe that it was only a temporary measure.

The claimant had asked AP for a letter to give to her mortgage broker, but did not specify what amount to put in it. The claimant had only been working part-time since the new arrangement to separate herself and AF, previously she had been working forty hours a week. The claimant had a conversation, not a confrontation, with AP after she told the mortgage broker that the claimant worked part-time. The claimant denied that she cursed at AP. She had received no verbal warnings from MD, there had only been conversations. At the meeting on Wednesday 28th the claimant told MD that she wouldn't work for him again.

When the claimant returned to the factory on the Thursday after being suspended MD offered her a redundancy payment of €5000.00, though the claimant had suggested €25,000.00. MD phoned

later to say that as she wasn't prepared to work, she wasn't entitled to a redundancy payment. The claimant denied she could have waved the letter for the mortgage broker at MD as the mortgage broker still had the letter.

Determination:

The Tribunal heard conflicting evidence from each party. The Tribunal finds that the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, fails for lack of evidence.

By virtue of the lack of procedures, which was conceded by the respondent company, the Tribunal finds that the claim under the Unfair Dismissals Acts, 1977 to 2001, succeeds and awards the claimant €6,000.00 (six thousand euro).

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)