

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
Employee

CASE NO. UD440/2007
MN305/2007
WT130/2007

against
Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs M Quinlan

Members: Mr M Murphy
Mr O Nulty

heard this claim at Dundalk on 4th March 2008

Representation:

Claimant: Woods Ahern Mullen, Solicitors
18 Francis Street, Dundalk, Co. Louth

Respondent: McDonough Matthews & Breen, Solicitors
Distillery House, Distillery Lane, Dundalk, Co Louth

The determination of the Tribunal was as follows:

The claimant was employed as a deli-assistant at a filling station owned by the respondent company from 22nd August 2005 until 2nd February 2007. There was no written contract of employment. The claimant received a gross weekly wage of €317.00. During an eight hour shift the claimant received a 10-minute break in the morning and a 20-minute break for lunch.

The Managing Director (MD) of the respondent company stated that the claimant had been taking teas, coffees, sandwiches and muffins without paying for them. When MD believed that the claimant was taking the items without paying for them he began to observe her, and another employee's, movements while at work, via CCTV, over four days, 29th & 30th January, and 1st & 2nd February 2007.

At around midday on 2nd February MD told the claimant and another employee that he was calling them to a meeting at 3pm that afternoon. MD did not specify what the meeting was about nor did he offer the claimant the opportunity to have a representative with her. At the meeting MD asked

the claimant if she had been taking items without paying for them, she agreed she had. The claimant had a poor standard of English and the MD communicated with her via the other employee, who had better English, at the meeting. MD gave the claimant her wages and holiday pay and dismissed the claimant with immediate effect. MD had never previously spoken to the claimant about the requirement to pay for goods. There was an instruction document which included a point that goods must be paid for, which the claimant had signed at the commencement of her employment in 2005, previous to the MD being manager at the filling station.

Determination:

This was a case of summary dismissal in which the respondent company had to demonstrate it acted in a fair and reasonable way considering the circumstances. The respondent company failed to do this. Instant dismissal is a blunt instrument and must therefore be used very cautiously and sparingly, if at all. No proper procedures were applied in this case such as an investigation or a right of representation for the claimant who was facing dismissal. No steps were taken to ensure that the claimant understood what the respondent was saying. Undoubtedly, the claimant was unaware of the true position regarding the matter of coffee or tea on breaks and to the entitlement to refreshments generally. This was in no way helped by the fact that the claimant's knowledge of the English language was minimal.

As regards the claim under the Organisation of Working Time Act, 1997, it was not established to the satisfaction of the Tribunal that there had been any breach of this Act that the Tribunal could quantify. Therefore, the claim under the Organisation of Working Time Act, 1997, fails.

The Tribunal finds that the claimant was unfairly dismissed, and therefore, the claim under the Unfair Dismissals Acts, 1977 to 2001, succeeds. In the circumstances of this case, the Tribunal considers that the most appropriate redress is compensation. The Tribunal considered the claimant's financial loss subsequent to her dismissal and her efforts to mitigate that loss (despite her limited knowledge of English) by seeking new employment. Accordingly, the Tribunal deems it just and equitable, under the Unfair Dismissals Acts, 1977 to 2001, to award the claimant the sum of €10,000.00 (ten thousand euro) as compensation for her unfair dismissal.

In addition, the claim under the Minimum Notice and Terms Of Employment Acts, 1973 to 2001, succeeds. The Tribunal awards the claimant the sum of €317.00 (three hundred and seventeen euro) this amount being equivalent to one week's gross pay at €317.00 per week. Note: as the claimant had continuous service with the respondent of more than thirteen weeks but under two years she was entitled to one week's notice.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)