

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
Employee

CASE NO. UD441/2007
MN306/2007
WT131/2007

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 2nd September 2004 until 2nd February 2007. There was no written contract of employment. The claimant's gross weekly wage was €323.70. 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. MD gave

the claimant her wages and holiday pay and dismissed her with immediate effect. The claimant translated for her colleague. 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. The claimant gave evidence that her previous manager had told her it was unnecessary to pay for tea and coffee, the claimant did not describe the policy the previous manager had with regard to other products. The claimant had not mentioned this at the meeting of the 2nd February as she was shocked.

Determination:

This is a case of summary dismissal in which the respondent company has 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. Undoubtedly, the claimant was unaware of the true position regarding the matter of coffee or tea for breaks and to the entitlement to refreshments generally.

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 by seeking new employment. The Tribunal noted that the claimant was successful in this owing to her ability to speak English. Accordingly, the Tribunal deems it just and equitable, under the Unfair Dismissals Acts, 1977 to 2001, to award the claimant the sum of €5,000.00 (five 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 €627.40 (six hundred and twenty-seven euro, forty cent), this amount being equivalent to two weeks' gross pay at €323.70 per week. Note: as the claimant had continuous service with the respondent of over two years, but, under five years she was entitled to two weeks' notice.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)