

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

MN226/2008
UD246/2008

against

Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr J. Goulding
Mr S. Mackell

heard this claim at Naas on 1st July 2008
and at Dublin on 22nd September 2008
and 23rd September 2008

Representation:

Claimant :

Ms Ruth Mylotte, B.L., instructed by Mason Hayes & Curran, Solicitors,
South Bank House, Barrow Street, Dublin 4

Respondent:

Mr Ercus Stewart, S.C., instructed by Wilkinson & Price, Solicitors,
South Main Street, Naas, Co. Kildare

The determination of the Tribunal was as follows:-

Determination:

The claimant was dismissed because she sent emails with attachments containing company information to her husband's email account outside the company. She said she sent these emails as "back-up" because of a problem over computer crashes.

Having heard the claimant's evidence and cross-examination, we cannot accept her explanation. We therefore find that her conduct amounted to "substantial grounds" justifying the dismissal

within the meanings of Section 6(1) and (4) and 6(6) of the Unfair Dismissals Act, 1977. However Section 5(b) of the Unfair Dismissals (Amendment) Act, 1993 provides that in determining if the dismissal is unfair regard may be had to “the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal”.

The respondent’s CEO admitted that he did not follow the procedures set down in her contract of employment. He called her to a meeting without notice of what was involved and with no opportunity to be represented and without adhering to the contract requirement that details of complaints be given three days before a disciplinary hearing. This is not a minor slip-up but a significant breach of the contract of employment. We must therefore have regard to that under Section 5(b) of the Unfair Dismissals (Amendment) Act, 1993.

For this reason we find the dismissal is unfair, despite the “substantial” grounds shown, but we have regard to the extent to which her conduct contributed to the dismissal under Section 6(b)(f) of the Unfair Dismissals (Amendment) Act, 1993.

In assessing redress, re-instatement or re-engagement are not feasible in this case and in assessing compensation we have regard to the claimant’s major contribution to the dismissal and we make an award of €1,000 as is “just and equitable having regard to all the circumstances” under Section 7(1)(c) Unfair Dismissal Act, 1977.

Her claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 fails as she was dismissed for “misconduct” under Section 8 of the said Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

