

EMPLOYMENT APPEALS TRIBUNAL

Claims Of:
Employee

Case Nos:
UD310/2007
MN206/2007
WT96/2007

Employee

UD311/2007
MN207/2007
WT97/2007

against
3 Employers

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L Ó Catháin

Members: Mr. G Phelan
Mr. T Kennelly

heard this claim at Nenagh on 13th May 2008 and 31st July 2008

Representation:

Claimants: Mr Bill O'Brien BL, instructed by O'Meara & Company, Solicitors,
Clare Street, Nenagh, Co. Tipperary

Respondents: Mr. Denis Keane, McGrath & Company, Solicitors,
51 Kenyon Street, Nenagh, Co. Tipperary

The determination of the Tribunal was as follows:

Claimant's Case:

Claimant A commenced employment with the respondent in September 2004. Her role consisted of general shop duties. The claimant was working on Tuesday, 17 October 2006. At approximately 1.30pm, Mr. W, one of the respondents, shouted at her to come into the office. Plastic bags blackened the two glass panels in the door to the office. One of the respondent's suppliers was present in the office, as was Claimant B. When Claimant A went into the office the door was locked behind her. The supplier asked Claimant A and Claimant B if they realised that Mr. W was weeks away from bankruptcy. He asked if they could help Mr. W with this. The supplier also

asked if they knew anything about dishonesty in the shop. The supplier asked them if they were in a position to get a loan. Mr. W said that he wanted €10,000 from each of the claimants. The supplier told them it could be sorted with a sum of money or they could take two weeks without pay. Mr. W told the claimants that if they paid €10,000 the matter would not go any further otherwise he threatened to phone the Guards. Claimant A was very nervous. Claimant A described Mr. W as very agitated at this meeting.

There was a television monitor in the office and it was connected to CCTV. Mr. W told the claimant that he had seen something that morning on the security tapes and that the security company would collect the tapes the following day.

Claimant A had taken bread rolls for her children's lunches that morning. When she went to pay for the items there was no change in the till. Claimant A told Mr. W at the meeting that she intended to pay for these items. The supplier told the claimants that they could resign or be suspended for two weeks without pay.

The supplier and Mr. W left the office for a period of time. When they returned they locked the door again and the claimants were told that they could not leave until "the matter was sorted." The supplier left the meeting after 50 minutes. The claimants remained in the office for a further 20 minutes. Claimant A offered €500 to Mr. W because she was nervous and wanted to go home. Mr. W told the claimants to go home and think about it.

Mr. W asked Claimant A to phone him on Wednesday. When she phoned him he asked if she had thought about it and she asked what options she had. Mr. W told her she could either pay €10,000 or he would contact the Guards.

Claimant A attended her doctor on the Friday. She contacted the Guards on the 20 October 2006 and she gave them a statement. Claimant A was unable to return to work after the meeting in the office.

Claimant A recalled another incident in July 2006 when there was a note in the till to say that the till was short and the money would be deducted from everyone's wages. Claimant A threatened to leave her employment at that time. Mr. W apologised to her and gave her €100 to remain in his employment.

Claimant A gave evidence of her loss.

During cross-examination it was put to Claimant A that the allegation of theft was initially denied by her but subsequently admitted. Claimant A replied that she could not be sure. Claimant A confirmed that after the meeting in the office she spent some time in the store purchasing groceries.

In reply to questions from the Tribunal, Claimant A stated that she offered €500.00 at the meeting, as she was upset.

Claimant B gave evidence to the Tribunal that she commenced employment with the respondent in September 2005. In her evidence Claimant B confirmed the details of the meeting of the 17 October 2006 as given by Claimant A.

Mr. W put it to Claimant B at this meeting that she had stolen two items. Claimant B replied that she had intended to pay for these items. The supplier told Claimant B that a sum of money could sort the matter out. When the supplier left the meeting Mr. W told the claimants that they owed

him €10,000 each or else the Guards would be contacted. Mr. W told them to go home and think about it.

Claimant B stated that she had bought three items but she did not have the money to pay for the third item. Claimant B gave the three items to her mother to bring home. Claimant B intended to go to the ATM at lunchtime and she put a note in the till to say that she owed for one of the items.

Some time after the meeting Claimant B met with Mr. W outside her house. He asked if she could get him €5,000. When Claimant B said she could not get this sum of money he asked her if she could get €2,500. Claimant B said she would see if she could. Claimant B attended her doctor the following Monday and she also contacted the Guards who took a statement from her.

Claimant B gave evidence of her loss.

During cross-examination Claimant B confirmed that at the meeting of the 17 October 2006 she did not tell Mr. W and the supplier that she had put a note in the till pertaining to the third item.

In reply to questions from the Tribunal, Claimant B stated that items were often given on credit to customers. The item was listed on the customer's account and the receipt for the item put on a wall behind the till.

Claimant A's sister gave evidence to the Tribunal that Claimant A emerged from the office at 3.25pm.

Claimant B's mother gave evidence that she saw Mr. W talking to Claimant B outside the house for approximately 20 minutes.

During cross-examination Claimant B's mother confirmed that she brought the two items home that Claimant B had bought. Claimant B wrote a note about the third item.

Respondent's Case:

Ms. Q gave evidence that she was working in the shop on the 17 October 2006. She did not hear any shouting from the office on this date. The glass panels in the door were blackened but this was because there was a suggestion of theft in the respondent's shop. It was Ms. Q's understanding that the glass was blackened as Mr. W often had cash on his desk in the office.

Ms. Q gave evidence that every morning Mr. W would leave the shop to collect the newspapers. Claimant B was in charge of the till. Ms. Q worked on the deli counter. A number of times Ms. Q saw Claimant B with "her hand in the till" or helping herself to phone credit. Claimant B referred to it as treating herself and that Mr. W would not mind. Ms. Q recalled a specific instance when Claimant B's sister came into the shop and said she wanted a new CD player for her car. Claimant B said that she would take the money from the till and that Mr. W would not mind.

Ms. Q felt it was her duty to tell Mr. W about this. Ms. Q told Mr. W exactly what she knew and what she had seen.

In reply to questions from the Tribunal, Ms. Q stated that she was aware of the CCTV in the shop and so were the other employees.

Mr. D gave evidence to the Tribunal that he worked for the respondent. At approximately 2.15pm he opened the door to the office. Mr. W told him to leave as a meeting was taking place. Mr. D did not hear any shouting from the office. He saw the two claimants emerge from the office at 3.20pm.

Mr. W, one of the respondents, gave evidence that he had bought the shop with his brother in the summer of 2004, and had developed it into a thriving business with ten or twelve employees. The business began to struggle from mid to late 2006. The respondent had exceeded his overdraft and had to pay cash on delivery. His accounts showed that turnover was good but the business was losing money. He became aware of the possibility of theft in the shop and borrowed a digital CCTV, which was installed without the knowledge of staff using existing cameras. He put black plastic bags over the windows in the door to the room where the equipment was and told staff to use the canteen for breaks and not that room. On the 17 October 2006 Mr. W let it be known that he was going for a haircut and left the shop. While out he received a phone call from a staff member instructing him to come back to the shop as the two claimants were putting toys into black plastic bags, one of them had been handed out to one of the claimant's mother and the other was behind the counter.

Mr. W requested that a friend of his, and one of his suppliers, come to the shop as he had taken legal advice on the matter on behalf of the respondent. The respondent requested the claimants to attend a meeting in the room, which housed the CCTV equipment. The respondent's friend asked the claimants if they knew anything about the difficulties that the respondent was having. The claimants denied any knowledge of stealing from the shop until after approximately half an hour the respondent told them he had CCTV recordings of them stealing. The claimants then confessed to stealing. One of the claimants asked if six hundred euro would settle it, but the respondent replied that ten thousand wouldn't settle it. The respondent then dismissed the claimants without notice for gross misconduct.

Determination:

The level of proof required for constructive dismissal was not established by the claimants and, accordingly, the Tribunal finds that the claims under the Unfair Dismissals Acts, 1977 to 2001, and Minimum Notice and Terms Of Employment Acts, 1973 to 2001, fail. The claim under the Organisation of Working Time Act, 1997, fails for lack of evidence.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)