

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
Employee

CASE NO.
UD664/2007
MN535/2007
WT223/2007

against

Employer

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 J. O'Connor
Members: Mr. M. Forde
Mr K. O'Connor

heard this claim at Killarney on 27th June 2008
and 8th October 2008

Representation:

Claimant: Mr Conor Murphy, Murphy Healy & Co, Solicitors, Market
Street, Kenmare, Co Kerry

Respondent: Ms Noreen Brown, Pdraig J O'Connell Solicitors, Glebe Lane,
Killarney, Co Kerry

The determination of the Tribunal was as follows:

Respondent's case:

The Manager of respondent company gave evidence that the claimant was dismissed in May 2007 due to an excess of staff working in the reception area of the hotel and the inability of the claimant to cover weekend shifts, and that it was unrelated to an earlier letter outlining several performance issues to the claimant. The Manager was hired in 2006 to improve customer service and revenue and to reduce costs. She was unable to cover shifts on reception as the previous manager had. In 2007 the manager was seeking to have more cover for the reception area at weekends. Four staff, two full-time and two part-time, worked on reception at that time, though both part-time staff were only able to work on weekdays. The full-time staff members were seeking to have some weekends off. For a period of time some part-time flexible staff members were hired, however this turned out to be an unreliable system, so it was decided to hire an additional full-time staff member.

Due to an excess of staff and the claimant's inability to cover weekends, the manager decided to dismiss her. The other part-time weekday staff member was kept as she had more responsibilities than the claimant. There had been performance issues with the claimant, which contributed to the manager's decision to dismiss her.

The manager accepted that it was the claimant who instigated a meeting in February concerning her wages, which led to the claimant's performance being discussed. The claimant was not informed that the meeting on 11th April 2007 was a disciplinary one and could lead to the claimant receiving a verbal & written

warning, regarding her performance, in a letter dated 13th April 2007. The manager was unaware of what procedures should be followed in relation to issuing warnings and staff were unaware of the disciplinary procedures regarding warnings. The claimant responded to all the issues in the letter dated 20th April 2007. There was no further meeting about these issues though they were discussed.

The claimant was given no written warning that her inability to work weekends could lead to her dismissal. The manager claimed that it was apparent that there were too many staff and this had been spoken about. There was no contract of employment or any written grievance process or disciplinary procedure.

Claimant's case:

The Tribunal heard evidence from the Claimant. She commenced employment in September 2005. She worked part time as a hotel receptionist. She did not receive a contract of employment or conditions of employment. She had stipulated that she work part time as she is a single parent and could not work weekend; when she first commenced employment JOL was the manageress who employed her and she had guaranteed her shifts and that she would not work on weekends.

There was a change of management and AM became her manager. The Claimant's shifts became less and less. When AM started working in the hotel relations deteriorated. The Claimant felt that she was being singled out and picked on. She felt that she could do no right.

The Claimant requested a meeting with AM as she wanted to know why her rota was changed. It was only at this meeting that she was told that she was being given a warning. She was not given details of a grievance procedure that she might utilise. She responded to the allegations in writing on 20th April 2007. No meeting took place. She was called to the restaurant and was handed a letter terminating her employment, which stated that the Respondent did not need part time staff and they only needed full time staff.

The Claimant agreed when asked that she was not due notice as the letter notified her of her employment ending. She agreed that she was not due holidays.

Determination:

Having carefully considered all the evidence adduced in this case the Tribunal unanimously determines that the dismissal was unfair. The Claimant was not given any warning. The Claimant was not told that not working the weekend would put her job in jeopardy. The Tribunal determines that the most appropriate remedy in this case to be compensation. Accordingly, having regard to all the circumstances, the Tribunal awards the Claimant the sum of €5,000.00, as compensation under the Unfair Dismissals Acts, 1977 to 2001.

The case under the Minimum Notice and Terms Of Employment Acts, 1973 to 2001, is dismissed.

The claim under the Organisation Of Working Time Act, 1997, is dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)