

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
Employee

CASE NO.
UD704/2008
MN641/2008

against
Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr B. Garvey BL
Members: Mr F. Moloney
Mr P. Trehy

heard this claim at Dublin on 7th November 2008

Representation:

Claimant: Ms Cathy Maguire BL instructed by Stefan O'Connor,
Cullen Tyrell & O'Beirne, 3 Prince Of Wales Street, Bray, Co. Wicklow

Respondent: No appearance or representation

The Tribunal is satisfied that proper notification was sent to the Respondent. There was no appearance or representation on behalf of the Respondent. The Tribunal heard the uncontested evidence of the Claimant.

Claimant's case:

The Claimant was employed on 18th December 2006 as a senior negotiator in the Respondent a auctioneer company. She was not given a contract of employment. Her pay was €45,000.00 per annum and she was promised equity within one year. Her workload was ok for the first month and then staff were let-go and some staff left the Respondent; twelve staff left within a year. The workload increased.

In January 2007 circa three weeks into her employment she received a document from the Revenue Commissioners. The document indicated that she was still employed by her previous employer.

In August 2007 she was due to talk to her employer about a raise and how she was doing in her work. She had previously asked for a raise. Her employer told her that they would put together a commission structure for her.

She had been in contact with another employer, as she was looking for work closer to her residence in Bray. At the end of August 2007 she spoke to the prospective employer who offered her a job.

She did not take him up on his job offer, as she felt uneasy about the situation.

A few days before she was due to go on holidays in November 2007 she met her employer and asked him if he had come to a decision about her pay rise. She told him that she had been offered another position at €60,000.00, per annum and she declined the offer. The next day he told her that she would have a salary of €54,000.00 with a bonus of €6,000.00, to be spread over the year. Nothing of note occurred until after Christmas.

In January her employer spoke to her and said to her that he saw that she had placed on the notice board that she intended to take holidays. He was angry and told her that she had gone against protocol. He told her that she could not take holidays in March. She told him that he never told her that she could take holidays in March. He left and returned some time later. He apologised to her and told her that he and his partner took holidays in March each year.

She had further contact with the Revenue Commissioners who told her that as far as they were concerned she had not worked since a date in 2006. She queried this with her employer who told her that he had sent in forms to the Revenue Commissioners and that he would check this the following day. She phoned the Revenue Commissioners and they asked if she had received a p60 and she told them that she had. They asked her to forward it to them so that they could update her information. Three days before her holidays she was asked to update 50 items. This was on top of her usual work.

On Monday 31st March the owner returned from holidays. He told her that he was extremely unhappy with her work. He told her that he could not see a future for her in the company. He told her that for the money he was paying her she would have to “go the extra mile”. She told him that she could not listen to him. She was about to resign when he interrupted her. He told her that she would not resign and that he was asking her to leave. He told her to work her months notice, which she did.

A week into her notice the partner or the co-owner of the organisation spoke to her. She asked the Claimant to tell her what happened. She told her all that had happened and about the Revenue Commissioners. They conversed and she asked the claimant if she would consider staying.

The owner called her the following day and apologised to her for any hurt. He did not say anything else.

The Tribunal heard evidence on loss.

The claimant's representative made a submission to the Tribunal. The representative opened letters of correspondence to the Tribunal.

Determination:

Based on the uncontested evidence the Tribunal determine that the Claimant was unfairly dismissed.

The letter that the Respondent sent in response to the Claimant's representative stating that the Claimant was going to leave her employment in any event is not a defence to the dismissal.

The Tribunal awards the Claimant the sum of €61,660.00, as compensation under the Unfair

Dismissals Acts, 1977 to 2001.

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

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)