

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

CASE NO. UD805/2008
- appellant

against the recommendation of the Rights Commissioner in the case of:

Employee
V

Employer - respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P O'Leary BL

Members: Mr D Winston
Ms K Warnock

heard this appeal at Navan on 11th December 2008

Representation:

Appellant: Ms Josephine Kerr,
Blanchardstown Citizens Information
Westend House, Westend Office Park, Snugborough Road Extension,
Blanchardstown, Dublin 15

Respondent: Mr Michael Shanley
Oliver Shanley & Co.
Solicitors
62/63 Academy Street, Navan, Co. Meath

This case came before the Tribunal by way of an appeal of a decision of a Rights Commissioner ref: r-060325-ud-08/JT. The employee was seeking to have the Rights Commissioner's decision upset.

The determination of the Tribunal was as follows:

Appellant's Case:

The appellant originally began working for the respondent company, as a hair stylist, in 2004. She left for a few months but returned when the Managing Director (MD) asked her to come back in August 2006. The employment was uneventful until an incident on Tuesday 23rd October 2007 when there was a dispute, between the claimant, a trainee and a receptionist, over who would wash a customer's hair. The receptionist told her that it was her customer and that she should do

t, which is what she did in the end.

The appellant was thirteen weeks pregnant and had arranged to meet MD at on Friday 26th October to give him her scan dates. She had told MD the week previously about her pregnancy and some of her colleagues also knew, though the receptionist would not have known. On Thursday 25th October as the appellant arrived for work she was 'collared' by the receptionist who seemed to believe that the appellant had sought the meeting to discuss her and the incident on Tuesday. The appellant told her that she had other issues to deal with and went to the back of the salon. The appellant was upset and began to feel unwell; she decided to leave the salon and go home. She textmessed MD to say that work had gotten too much and she was going home. She went to her doctor and was diagnosed with low blood pressure.

MD was unable to meet at 6pm on Friday and asked the appellant to come to the salon at 6pm the next day. As she didn't feel well the appellant's husband brought her sick cert to the salon for her. On Tuesday 30th the appellant received a message on her mobile phone from MD. He said he was dismissing the appellant. A series of correspondence ensued beginning with the appellant receiving a letter of dismissal dated 30th October 2007. The letter stated that the dismissal was due to breach of conduct for leaving work without permission on 25th October 2007. The appellant then wrote on 1st November to seek a meeting to discuss the matter. The respondent replied on 3rd November that no further explanation was due. The phrase used by the respondent when dismissing the claimant was that she was guilty of breach of conduct, which should have been that the claimant was guilty of misconduct. On 28th November the appellant wrote to express her unhappiness at being dismissed without an opportunity to defend herself.

The appellant disputed that she couldn't make an earlier arranged meeting at 1pm on Friday 25th with MD in order to view a house. She insisted that the first meeting time arranged was for 6pm on Friday. The appellant gave evidence of her loss.

Respondent's Case:

A manager of the salon [not MD] gave evidence that she had written the dismissal letter of 30th October 2007. The manager said that neither she nor MD knew that the appellant was pregnant prior to Friday 25th October when the appellant told MD during a phone call, which the manager was listening to on speakerphone, as MD had wanted her to be a witness. The manager didn't know if the appellant was aware that she was listening.

The manager believed that the incident between the receptionist and the appellant occurred on the Wednesday and not the Tuesday and that she was there, but the appellant had not alerted her to the incident. She also stated that she did not work on the same shift as the receptionist. On Thursday the manager received a phone call from the receptionist to ask what to do after she had spoken with the appellant. The manager was not present on Thursday. She considered that the receptionist was in charge when she and MD were absent, though she could not say if the appellant was aware of this. There were no previous incidents between the appellant and other staff members.

The manager believed that the meeting on Friday was to discuss why the appellant walked out the day before and they didn't know anything about scans. She contended that the appellant had cancelled a lunchtime meeting on Friday so that she could view a house, but agreed that MD could not make the 6pm meeting. She was aware that the appellant supplied a sick cert the following day.

The manager agreed that the appellant did not have a written contract of employment and that there

was no written disciplinary procedure. She considered that the appellant leaving the workplace without consent was gross misconduct and that if she had said she was sick she would have understood. The manager considered that the appellant had walked out and that it was her mistake to have written in the dismissal letter that she had no option but to terminate her employment.

Determination:

The Tribunal determines that the employer dismissed the appellant by phone call and that that dismissal was unfair by reason of the failure of the employer to conduct a proper investigation into the matter and to give the appellant an opportunity to be heard.

The Tribunal deems the most appropriate remedy in the circumstances to be compensation and this was the preferred remedy of the parties. The appellant's loss was for the period until she took up new employment. The Tribunal noted that it was her decision to work a three-day week from that time. The Tribunal awards the appellant €2,000.00 (two thousand euro) compensation under the Unfair Dismissals Acts, 1977 To 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)