

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee
– **Claimant**

UD936/2008
RP806/2008
MN870/2008
WT395/2008

against

Employer
- **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
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: Ms. M. McAveety

Members: Mr. P. Pierson
Mr. P. Clarke

heard this appeal at Longford on 17 February 2009

Representation:

Claimant: Mr. Fergal Fitzgerald Doyle B.L. instructed by
Ms. Julie Coyne, Colm O’Cochlain & Co. Solicitors,
First Active House, Blessington Road,
Tallaght Village, Dublin 24

Respondent:
Mr. Mark Connellan, Connellans Solicitors,
Longford

The determination of the Tribunal was as follows:

Dismissal being in dispute in this case it fell to the claimant to prove the fact of dismissal.

The claimant was employed as a shop assistant in the respondent’s convenience store in Longford from 13 December 2004. In the summer of 2007 the respondent was promoted to the position as the initial manager of the respondent’s new store in Sligo. This new store is located on the campus of a third level educational establishment and does not operate at times of the year when the establishment is closed to students. The claimant did not receive any written contract of

employment either at the commencement of her employment or on her promotion to the position in Sligo. It is the claimant's position that she had a verbal agreement for the payment of an annual bonus in addition to the agreed salary. The respondent's position is that there was never to be any question of a bonus but that he mentioned a bonus in a letter to the claimant's bankers in order to support a loan application being made by the claimant. When the claimant moved to the Sligo store the respondent gave the claimant a van, which she insured and maintained at her own expense, to assist in the carrying out of her duties.

The Sligo store closed for the summer vacation in June 2008 at which time and by agreement the claimant transferred back to working in the respondent's Longford store. It is the claimant's position that, in May 2008, whilst discussing her move back to Longford for the vacation period the managing director (MD) of the respondent broached the possibility of the claimant's position becoming redundant. When the claimant returned to the Longford store it was agreed that in July the claimant could take four weeks' annual leave. There is a dispute between the parties as to whether the fourth week was to be paid or unpaid leave. The claimant went on leave on or about 9 July 2008 and returned to Longford on or about 7 August 2008. On making enquiries at the Longford store the claimant was disconcerted to discover that she had not been rostered for any shifts in the Longford store before 15 August 2008, the furthest extent to which the roster was drawn up.

The claimant met MD on 11 August 2008 and there is a considerable difference between the parties about the content of this meeting. The claimant's position is that she complained to MD about not being paid for the fourth week of her annual leave. Her position is further that when she asked about when she would be back on the roster MD said that maybe she could work later that week if there was some work for her. She then asked MD if that meant that there was a question of her being made redundant. MD had replied that he needed to speak to his accountant. The respondent's position is that the claimant resigned at this meeting telling MD that she was returning to Poland along with her partner who was out of work. The respondent's position is further that MD prepared a P45 for the claimant and was left in the position of having to find a replacement manager for the Sligo store before MD went on holiday on 15 August 2008. To this end MD approached the assistant manager (AM) of his off licence premises later on 11 August 2008 and offered AM the now vacant position in Sligo, an offer that AM accepted.

On 13 August 2008 MD again met the claimant and told her that redundancy was out of the question as she had told him at their previous meeting that she wished to leave. MD also proffered a newly drawn up contract on considerably reduced terms to the claimant. This putative contract contained a term that if the claimant did not accept its terms she would be considered to be returning to Poland and her P45 would issue. The claimant refused to sign this contract but was not given her P45 at this time but received it some time towards the end of August 2008. AM became manager of the Sligo store and there was no reduction in the number of employees in the respondent as a new employee was taken on in the off licence to replace AM.

Determination:

The Tribunal does not accept that the claimant resigned from her position as manager of the Sligo store on 11 August 2008 or, indeed, at any other time. The contract proffered on 13 August 2008 was at considerably worse terms and conditions from which the claimant had hitherto been employed and it was unreasonable for MD to expect her to agree to it. The Tribunal considers that the actions of MD on 13 August 2008 amount to a dismissal of the claimant. It must follow that such dismissal was unfair. The Tribunal awards €13,000-00 under the Unfair Dismissals Acts, 1977

to 2007. Claims under the Unfair Dismissals Acts, 1977 to 2007 and the Redundancy Payments Acts, 1967 to 2007 being mutually exclusive it follows that the appeal under the Redundancy Payments Acts must fail. The Tribunal further awards €1,250-00, being two weeks' pay, under the Minimum Notice and Terms of Employment Acts 1973 to 2001. The Tribunal being satisfied that the claimant was entitled to be paid for the fourth week of holidays awards €625-00, being one week's pay, under the Organisation of Working Time Act, 1997

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)