

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD134/2008, MN130/2008

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: Ms. E. Kearney BL

Members: Mr. J. Redmond
Dr. A. Clune

heard this claim at Ennis on 25th September and 5th December 2008

Representation:

Claimant : Mr Patrick Moylan, O'Kelly Moylan, Solicitors, Market Square, Kilrush, Co. Clare

Respondent : Ms Ger Moriarty, Local Government Management Services Board,
Floor 2, Cumberland House, Fenian Street, Dublin 2

The determination of the Tribunal was as follows:

Respondent's Case

An administrative officer attached to the corporate services sector spoke of the difficulties she had with the claimant's work. This witness was also the claimant's line manager for several months up to August 2007 and had responsibility for staffing and the workload in that section.

The claimant commenced employment as a temporary clerical officer on 28 August 2006 and that contract was renewed to cover maternity leave up to the end of August of 2007. She joined the corporate services sector in March 2007. The claimant was still in her probationary period.

From the start of that move the witness encountered difficulties with the claimant in relation to her attitude, behaviour and general approach to work. Those problems included clerical errors, time keeping, relationships with other staff, and absences. The witness did not consider the claimant as a good team player and added that her absences and time keeping put extra pressure on other staff. The claimant's computer skills were also poor and she underwent some training in that regard but

with no apparent improvement. The witness detailed her difficulties with the claimant on 22 August 2007 and subsequently forwarded them to the human resource section. She recommended that the claimant neither receive an increment nor be taken off her probationary status. By that stage she had reassigned the claimant to the archives section due to ongoing poor performance in the corporate services section.

While the witness was not involved in dismissing the claimant later that month, she understood that her recommendation would prevent her from getting a salary increase or changing her status. Up to August 2007 the claimant had not been subjected to any formal disciplinary hearings or sanctions. The witness accepted that the claimant was dismissed due to her inability to have her probation approved.

An acting senior executive officer at the time said that the claimant was recruited on the basis of her word processing skills. The claimant passed a test and was successful at an interview prior to her appointment. On 22 August the witness met the claimant at her request to discuss the claimant's possible increment increase. The claimant's line manager had not approved this increase as she felt the claimant had not merited it. Between that meeting and another one two days later the witness received a report from that line manager and also consulted two senior staff. By the second meeting the witness had decided to dismiss the claimant. The claimant initially seemed pleased at that decision but later stated she would challenge that decision. The main reason for her decision to dismiss the claimant was related to her performance. The claimant was not fulfilling the conditions of her contract and "was not up to the mark" at work. There was an onus on the respondent to provide a good level of service to the public and the claimant was not capable of doing this.

According to the witness both natural justice and fair procedures were applied in this case. However the witness also accepted that the claimant was not informed that she was facing dismissal at that meeting. The respondent had neither conducted an investigation into the claimant's role nor were any formal warnings issued to her. The witness acknowledged she had no concept of a notice requirement and no knowledge of labour law. She felt that it was not necessary "to go through" a disciplinary procedure and felt the dismissal became effective on the day it was given.

On the second day of the hearing samples of flexi activity reports for different personnel were produced to the tribunal. A senior executive working in corporate services gave evidence on behalf of the respondent. He worked with the claimant and overall he rated her work as poor. She had been responsible for the canteen money but left the cabinet in which it was kept, unlocked over night. He had signed the claimant's evaluation form of the 13 June 2007 in which the claimant was rated as below the required standard in "overall performance". The witness explained the process firstly the claimant's line manager met with the claimant and completed the form. He then signed off on the form as he agreed with this assessment. He found it strange that the claimant had required additional training.

The claimant had worked with the respondent on two temporary contracts and a third one issued to allow her to cover maternity leave in corporate services. He did not believe that this third contract would have been renewed when it expired. HR had contacted him before the claimant was dismissed to discuss and verify her performance. At the time of the claimant's dismissal they were acting under the probationary clause, in hindsight he believed that they should have used the disciplinary procedure in place.

Claimant's case

The claimant briefly outlined her career before she commenced with the respondent. She had been delighted to get the opportunity to work with the respondent as this had followed an exam and interviews. When she commenced she had worked on the register of electors it had been extremely busy and she had received good feedback from her line manager here, in relation to the quality of her work.

She was asked to go to corporate services to cover maternity leave. Soon after commencing here, her new line manager began to raise issues with her work. She gave some examples. Her line manager always raised these issues with her in front of her colleagues and had never brought the claimant in to an office to discuss them in private. There was one incident over the wrong minutes being sent out, the claimant maintained that her line manager had given her the minutes posted and she was not at fault. A couple of days after this incident her line manager rang her to say she was being moved to archives to cover for a colleague who was on holidays. She also had an incremental review meeting with her line manager on the 21 August, who told her that she would not be receiving an increment.

She was upset after this meeting and rang HR to arrange to meet with them to discuss her increment and to seek support. This meeting took place on the 22 August. On the 23 August she received a phone call from HR asking her to attend a meeting the next day. At this meeting she was given a report of the meeting of the 22 August and was then told she was being dismissed from her position. She admitted she initially did say she was delighted, as she had felt she had gone through so much up to this moment. She went on to say that she had gone to HR to ask for help and had ended up being dismissed.

Under cross-examination she confirmed she understood that her position with the respondent was temporary. She did not like her line manager's attitude, and refuted that her line manager had pointed out to her numerous errors. When asked if she had complained to her line manager about a colleague, she responded that she had told this colleague that she would have to clarify her own role with the line manager. The claimant did not have a problem with any individual in the office. Her line manager had moved her to archives because of alleged ongoing mistakes. She did not accept that she was late on occasions she would make sure she was on time, however she would forget to clock. The claimant recalled one occasion where she had to ring a colleague to cover for her, as she was late one morning.

In respect of her evaluation form of the 13 June 2007 she had signed it but had not seen the comments on it in relation to her poor communication skills. In relation to the ticks on this form where it rates her below standard in four of the categories, she said she was not aware that she could give feedback at this meeting, that when her line manager spoke, you did not have an opinion you just listened. She had worked to the best of her abilities.

Determination

After considering the evidence tendered in this case, the Tribunal unanimously find that fair procedures were not adequately applied in dealing with the claimant in this matter, and further, no proper and/or appropriate investigation was conducted in relation to the claimant's performance, nor were any formal warnings issued to her. The claimant was not made aware that she was facing dismissal until the meeting of the 24th August 2007 at which her employment was terminated.

In considering all of the circumstances the Tribunal makes a unanimous finding that the claimant was unfairly dismissed. The Tribunal awards the claimant €10,230.00 under the Unfair Dismissals Acts, 1977 to 2001

As no evidence was adduced in relation to the payment of minimum notice the Tribunal cannot make a monetary award under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

