

EMPLOYMENT APPEALS TRIBUNAL

Claim of: Case No.
Employee – Claimant UD1233/2008
MN664/2008

against

Employer - Respondent

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. D. Mac Carthy S C

Members: Mr J. Browne
Ms K. Garvey

heard this claim at Wexford on 15th January 2009

Representation:

Claimant: Mr. Padge Reck, Sunrise, Mulgannon, Wexford

Respondent: XXXX

The determination of the Tribunal was as follows:

Dismissal as a fact was in dispute between the parties.

The respondent is a taxi company. The claimant mainly worked as a base operator however on occasion she also drove a taxi. Mr. S of the company told the Tribunal that the claimant usually worked weekends and her remaining hours were spread throughout the week. It was a flexible arrangement.

The claimant attended her doctor on the 7th March 2008 and was medically certified unfit for work for a period of one week. Mr. S of the respondent agreed that the claimant had submitted a medical certificate for this period.

The dispute between the parties centred on the events of the 17th and 18th March 2008. The claimant stated that she was due to return to her doctor in a week and did so on the 18th March 2008. The doctor on this date provided her with a second medical certificate covering the period up

to the 24th March 2008.

Mr. S of the respondent stated that as the claimant was not certified for the 17th March 2008 he had scheduled her to work on that date. The claimant did not attend for work and he had to cover her shift on that date.

Both parties agreed that the claimant had submitted the second medical certificate to the office on the 18th March 2008 and that a subsequent telephone conversation had taken place. The claimant gave evidence that during the telephone call Mr. S shouted at her and expressed his unhappiness with her for being absent. The claimant replied that she was sick and had submitted a medical certificate. Mr. S told her that was not of any use to him. The claimant asked Mr. S if he was dismissing her for being sick and he replied, "yes."

Mr. S stated in his evidence that he had told the claimant during the telephone conversation that he was unhappy with her due to her absence from work on the 17th March 2008, at which time she was uncertified. The claimant said to him on the phone, "if that's how you feel about it, we will call it a day" and he replied "fine". Mr. S denied that he had dismissed the claimant because she was ill. He believed the claimant had resigned from her job.

A witness for the respondent gave evidence of a telephone call she received from the claimant on the 18th March 2008. The claimant told the witness that Mr. S had dismissed her because she was sick. The claimant further said that she and Mr. S had argued about the 17th March 2008 and that she had told him "we'll call it a day." The witness told the claimant if she had said that then she had not been dismissed.

During cross-examination it was put to the witness that the claimant had only told her that she had been dismissed. The witness refuted this by saying that they had spoken for a number of minutes about the matter.

Determination

After hearing the evidence of both parties the Tribunal cannot with confidence accept either version. As the onus is on the claimant to prove that she was dismissed and she has failed to discharge such an onus the claim under the Unfair Dismissals Acts, 1977 to 2001 and the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)