

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

- claimant

CASE NO.

MN720/08

UD775/08

Against

Employer

- respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr J. Horan
Ms. A. Moore

heard this claim at Naas on 15th December 2008 and 6th April 2009.

Representation:

Claimant: In person

Respondent: Mr. Tom Hogan, B.L., instructed by Dodd & Company, Solicitors, 11 Herbert Place,
Dublin 2

Dismissal as a fact was in dispute.

The determination of the Tribunal was as follows:-

The claimant commenced work with the respondent in 2006. Following surgery in Lithuania in October 2007 and on her return to work she asked to be assigned to lighter duties. She accepted cleaning duties in an adjacent supermarket owned by the respondent. She worked split shifts with a break between 12 noon and 3 pm. She asked and was granted permission on several occasions to rest in a bedroom in the hotel during her break.

On 30th January 2008 while resting in a room a guest entered the room and then left immediately. About 15 minutes later a manager knocked on the door and entered and saw her there and then left. At 3 pm she returned to work. Subsequently, she received a call from her supervisor and was asked

to come to the Manager's office. Her supervisor was also present in the office. The manager said that a complaint had been lodged against her from a guest in the hotel. The manager told her that she could not work in the hotel any longer, her work was finished and to leave. She understood that she was dismissed at this time. As she was rostered to work the following morning, 31st January 2008, the manager asked her to attend a meeting at 9 am with the general manager.

As she felt quite agitated and distressed the following day, her friend Mr. B. offered to attend the meeting on her behalf. He met the supervisor and told her that that the claimant was sick. That afternoon the claimant sent a text message to her supervisor "can I go to job tomorrow? If yes, when (time)? Her supervisor responded "no, only if you have a letter to say you are fit to work". About half an hour later her supervisor telephoned her. Mr. B. was present at the time of the call and she placed the phone on loudspeaker. Her supervisor said that no she could not return to work unless she brought a certificate from her doctor certifying that she had been ill.

The respondent contended that the claimant was a valued member of staff and never dismissed. Her job remained open for her provided she produced a medical certificate confirming that she was fit to resume work following her illness.

Determination:

The Tribunal was not satisfied that the claimant was dismissed. While there was some variation between the parties as to the content of the telephone conversation on 31st January 2008, an exchange of text messages makes it clear that the claimant was not dismissed.

Accordingly, the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and the Unfair Dismissals Acts, 1977 to 2001 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)