

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NOS.

Employee

- *claimant*

UD920/2008

MN847/2008

WT385/2008

Against

Employer - *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Hayes BL

Members: Mr. W. Power
Ms. M. Maher

heard this claim at Dublin on 15th December 2008

Representation:

Claimant: In person

Respondent: Ms. Deirdre Gavin of IBEC, Confederation House, 84/86 Baggot Street, Dublin 2.

The determination of the Tribunal was as follows:-

The fact of dismissal is not in dispute.

The claimant in this case commenced employment with the respondent on 26th August 2006. She was dismissed on 13th August 2008 and was given one week's pay in lieu of notice.

The respondent operates an attendance policy whereby each absence earns one point. This includes all absences, including certified sick leave, other than absences for annual leave, public holidays, maternity and related leaves, jury duty and force majeure leave. Once an employee has five points they are given a verbal warning, which lasts for six months. Eight points attract a written warning, which lasts for nine months. Ten points attract a final written warning, which lasts for twelve

months. Thirteen points leave an employee liable to dismissal. The points are expunged once the warning period has elapsed, so long as a further step in the disciplinary process has not been taken, due to absenteeism, in the interim.

The claimant was initially employed in the Blanchardstown Village branch where her attendance record was poor. The claimant accepted that this was so. On 23rd May 2007 she left the branch without authorisation. Consequently, she was requested to attend a meeting with company HR on 24th May 2007, which she did. She discussed difficulties that she was having and was allowed a period of leave so as to decide whether she wished to remain with the respondent. Her level of absenteeism was discussed at this meeting. There was a further meeting on 30th May. It was agreed that she should transfer to the Blanchardstown Centre branch. It was understood that, as part of her transfer, she would be committed to her employment and reduce her level of absenteeism.

The claimant's attendance record did not improve. On 17th July 2007 she was called to a disciplinary meeting. At that time she had been absent for eleven days since August 2006. This was considered to be a high rate of absenteeism. As a result of this disciplinary meeting the claimant was given a first written warning. The attendance policy was again explained to her. It was also explained that dismissal was possible should her attendance not improve. The imposition of this warning was not appealed.

The claimant's attendance record did not significantly improve. On 31st October 2007 she was called to a further disciplinary meeting and was issued with a final written warning.

Between the imposition of the final written warning and her dismissal, the claimant was absent for a further eleven days, although seven of those days were for certified illness. The claimant told the Tribunal, in cross-examination, that she cannot remember the causes for the other absences.

On 6th May 2008 the claimant attended a meeting with her branch manager. Several issues, including absenteeism were discussed. This was not a disciplinary meeting but her manager made her aware of the consequence that further absences could have.

The claimant was subsequently asked to attend a disciplinary hearing on 13th August 2008. She had been sent a letter dated 11th August. This letter was addressed to her at her place of employment. It advised that dismissal was possible and that she was entitled to be represented. The claimant told the Tribunal that she did not receive this letter. Given that it was sent on 11th August and that she was not scheduled to work on the 12th, the Tribunal accepts that she did not receive it in advance of the meeting. However, the Tribunal also accepts that she was told of the meeting, and the reason for it, by her branch manager on 11th August. However, the Tribunal finds that she was not advised that the disciplinary process could result in dismissal or that she was entitled to be represented.

The claimant attended the meeting on 13th August. She was asked whether she wished to be represented. She said that she did not so wish because she felt that it was then too late to get someone to come from Blanchardstown in time. She also felt that, because her recent absence had been due to a certified illness, dismissal was not a likely outcome. In the event, the claimant was dismissed on 13th August because her level of absenteeism had not improved, despite warnings and counselling.

Determination

The Tribunal, being satisfied that the claimant was not informed in advance of the meeting that led to her dismissal of her right to representation or of the likelihood of dismissal being the outcome, is satisfied that there was a significant procedural unfairness in the dismissal. However, the Tribunal is also satisfied that, by her continued poor attendance record, the claimant contributed to her dismissal. In respect of her claim under the Unfair Dismissals Acts, 1977 to 2007 the Tribunal awards to the claimant compensation in the amount of €1,000.00 as being just and equitable in the circumstances.

The Tribunal is satisfied that the claimant received her statutory notice entitlement. Therefore the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 is dismissed.

No evidence was adduced in respect of any loss pursuant to the Organisation of Working Time Act, 1997 and the claimant accepted that she had been paid her full entitlement of annual leave. The claim under this Act is therefore dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)