

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:

Employee

- claimant

CASE NO.

UD478/2008

MN425/2008

WT198/2008

against

Employer

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: Ms. E. Daly BL

Members: Mr. D. Morrison  
Ms. R. Kerrigan

heard these claims in Letterkenny on 6 November 2008 and 5-6 February 2009

Representation:

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Claimant(s) :

Mr. Alastair Purdy, Purdy Legal, Solicitors, New Docks,  
Lough Atalia, Galway

Respondent(s) :

Mr. Liam Hogan BL instructed by the the respondent

The determination of the Tribunal was as follows:-

The claimant's employment with the respondent (a firm of solicitors) commenced in January 2006 and ended with her dismissal in December 2007. She claimed unfair dismissal on the grounds that she had not been given any warnings nor a reason for her dismissal.

Denying that the claimant had been unfairly dismissed, the respondent argued that the claimant had received repeated warnings for unauthorised absence from the office, that she had constantly been

late and that she had repeatedly lied to her employer. It was contended that, following a final warning, the claimant had lied about a hairdressing appointment and had, without permission, left the office early. The claimant's contention that she had not been given a reason for her dismissal was dismissed as another lie on the grounds that the claimant had been given reasons for her dismissal in a letter dated 18 December 2007.

It was acknowledged at the start of the first day of hearing that the claimant had received a minimum notice payment subsequent to her employment with the respondent despite the fact that the respondent still contended that the claimant had been guilty of gross misconduct.

Giving sworn testimony, a respondent partner (hereafter referred to as P) said that she ran the respondent's Derrybeg office. Having moved to Ireland in 1990, she had known the claimant and the claimant's husband for many years. P and the claimant were friends and had even holidayed together.

In late 2005 P and another solicitor discontinued their ties with a third solicitor (Mr. X) who took three staff members with him. P interviewed legal secretaries. She also phoned the claimant and offered a part-time receptionist post. The claimant "kind of laughed" and asked if she could do it. P knew that the claimant had never worked anywhere in the area. The claimant was a mother whose husband managed a local company.

In October/November P asked the claimant to start in January on a part-time basis and the claimant did so working from 10.00 a.m. to 6.00 p.m. on Tuesdays, Wednesdays and Thursdays. As a receptionist for P, the claimant took messages and made appointments. The claimant was organised and very good at what she was doing.

Asked if the claimant had remained part-time, P said that with busy times and staff holiday periods the claimant had been full-time for most of 2006. However, P told the claimant that she had to go back to part-time because her staff were becoming disgruntled. Twenty-one days and bank holidays was the normal holiday amount. The claimant was not entitled to that because she was part-time. In 2006 the claimant got the full amount of holidays. Hence the staff disgruntlement.

In December 2006 the claimant left a memo in the general post tray at reception (without telling P directly) that she was going to Belgium in mid-December until January. P did not see it straight away. P had never got such a memo from another employee. It was only a small office. All other staff went to P a month or two before taking leave and diaried it to avoid any clash of dates. P brought the claimant into a room and said that this was not acceptable. P reminded the claimant that one staff member had a week booked for a visit to her sick mother in Alaska and that another staff member had time in California booked a long time previously.

P told the Tribunal that it was "kind of awkward" because the claimant was a friend and that she told the claimant that she would be in dire straits because she would be down three employees.

Asked what had been the result, P told the Tribunal that the claimant had said that she was going for a procedure and P had let her go but had told the claimant to come to P from then on, that the claimant knew P and that P would never refuse unless there was a good reason.

P was in the U.S. in March 2007 when she received a text message from the claimant saying that

the claimant was going to Belgium on 26 April for three weeks. P told the Tribunal that the claimant had done “the same again” but had waited until P was away and sent a text. P got back around 30 March, again took the claimant into a room and said that she could not keep employing the claimant if the claimant kept doing this. P mentioned the other staff. The claimant then went into detail about confirmations, communions and her mother not getting any younger. Saying that it was hard to live away from home, the claimant said that it would not be possible to be “in and out” and that she would have to go for three weeks. P let her go but during that time one of the claimant’s friends on the staff told P that the claimant was in Egypt with a friend. P was “absolutely devastated” that a friend would tell “such detailed lies”.

There was a meeting in P’s house. P was working from home some days. The claimant came to see her. P told the claimant that she knew that the claimant had been on holiday with a friend. The claimant admitted it but said that she had been in Belgium for a few days. P gave the claimant a final warning. P knew that the claimant’s husband’s factory would be having its summer shutdown holiday at end July/start August and said that the claimant’s employment would have to end if she took that period off whereupon the claimant started to cry and said that she loved her job. P replied that she knew this and pleaded with the claimant not to cry. The claimant “went on” about parents not getting any younger. P told her that she would let her go if she told P and that the claimant could take two weeks with her husband. The claimant thanked P for her support.

Asked at the Tribunal hearing about the effect of such holidays on business, P said that other staff were doing typing and bills et cetera while the claimant, who was very pleasant and organised, did filing as well as the making and changing of appointments but that with the claimant out of the office “things moved very slowly because others were doing her job”.

P now told the Tribunal: “There were other small things like I’d ring the office and she was not there. She would go off without asking me. I was rarely there before half-past ten. She would never come in at ten.” P said that she had known that the claimant would be late attending the respondent’s Dungloe office. When the claimant said that she had to travel from Gweedore P said that others also had to do this.

It came to the time for the claimant’s husband’s holidays. P had heard that the claimant had rung in sick. P gave her the benefit of the doubt. The firm got no medical certificate. The claimant did not come to the office the next day. Neither was there a phonecall from the claimant. P rang the claimant’s home. The claimant’s daughter answered and said that the claimant was away on holiday in Belgium.

Asked at the Tribunal hearing if she had made contact with the claimant, P replied that she had texted the claimant saying that she had not believed that the claimant would lie again. When the claimant “replied with a tone saying this is ridiculous” P had “wanted to end it then” and “would have dismissed anybody else” but the claimant “kept saying she’d been sick”. P described herself to the Tribunal as “too soft”. There was no medical certificate.

The final incident was on Friday 14 December 2007. P was going to Dungloe primary school for children’s rehearsals. The claimant thought that P would be out that afternoon. As P was leaving at 2.00 p.m. she had asked the claimant to hold the door for her whereupon the claimant had asked P if P would mind if the claimant left at 5.30 p.m. (for a hair appointment) because it was the claimant’s husband’s Xmas night out. P gave permission but said that hair appointments should be kept to evenings and weekends.

After short rehearsals P returned to the office at about 3.30 p.m., asked about the claimant and was told that the claimant had left. P told the Tribunal that “apparently” the claimant had made an appointment several weeks earlier for 2.45 p.m.. P then tried to phone the claimant but the claimant’s phone was off. P did not ring that evening because it was the night of the claimant’s husband’s Xmas party. The next day, P tried to call. On Monday the claimant did not turn up. There was no phonecall from her. The claimant’s son came into the office asking if his mother was there and P received a medical certificate.

P had a letter which she delivered to the claimant. This was the dismissal letter. In it P gave the reasons for dismissal. The claimant had actually thanked P for the way that P had treated her. The phone in the office was ringing all the time. All of the other staff had to do the claimant’s job when the claimant was out. Dictation could not be done. Even when P rang looking for the claimant the claimant would be away. Staff would be put in a difficult position.

Asked about other staff and the book for leave, P told the Tribunal that staff would ask P about leave and that they would check that no-one else was off. All were asked to put their holidays in it. After the claimant had gone P gathered that the claimant had never used the leave-book.

Commenting on the availability of employment by which the claimant could mitigate her loss, P said that there were factories in the claimant’s husband’s industrial estate, solicitors’ offices in Dungloe and many other places of employment. The claimant had had no employment and had not looked for work before working for P. Letterkenny was no more than forty minutes’ drive. Many people from Gweedore travelled to work in Letterkenny.

Giving sworn testimony, the claimant told the Tribunal that she had started with the respondent on 17 January 2006. P had rung her, had offered a job at the respondent and had given the claimant a few weeks to think about it. The claimant took the job. She had worked in her husband’s company before that.

When the claimant started for the respondent she was sorting papers and files for Mr. X (the abovementioned solicitor who had left). After a few weeks sorting paperwork the claimant worked on filing, post, getting files, appointments and phonecalls. She worked in the respondent’s office in Derrybeg which was the area where she lived.

Asked at the Tribunal hearing why she had been dismissed, the claimant replied that P had not been happy with her taking time off too often. She had told P that she would not work full-time but three days per week and picked Tuesday, Wednesday and Thursday. That would give the claimant Friday and Monday off. This changed after a few months when SG (a full-time secretary) left. P wanted the claimant to cover for SG while P looked for somebody. The claimant then worked full-time until her dismissal. She was not happy with the arrangement. She knew that it was a problem for P because the claimant was going away at weekends. The claimant was not happy. She went to P’s home about this.

When it was put to the claimant that P had told the Tribunal of asking the claimant to P’s home the claimant replied: “No. I went myself. She was not expecting me. I asked for part-time back. She said no. I asked for unpaid leave. She said no because others would ask for it. As a favour she gave me unpaid leave in July 2006 or 2007 to go away with my husband. It was in 2007.”

The claimant confirmed that she had changed from part-time to full-time and that near the end of 2006 (in week fifty-one) she had gone to hospital and had had an operation on her leg in Belgium. She said that this was the only time that she could do it and that she had told P but that P said that the claimant had told P a little too late. The claimant added to the Tribunal that she had not realised that colleagues would be off at that time. One of these colleagues was not working in the same office as the claimant and, in the case of another colleague, the claimant had not known that a lady (who was “a new girl”) had had a holiday booked before taking up employment with the respondent.

Questioned by the Tribunal, the claimant said that she had told P that she wanted to go away “probably two weeks before”. The claimant added: “I got the appointment around the start of the month. It was not something I wanted to do. I decided to do it.”

Asked if she had said to the respondent that she was not going on a holiday, the claimant replied that she had done so, that she had gone for an operation and that P had known that it was not a holiday.

The claimant told the Tribunal that she had not shown P any document about the operation but that P had not asked and that P had just said which other staff members were going away.

Asked if she had thought that she was going anyway, the claimant replied: “I had no choice. I thought it was a good idea in my holidays. We go to Belgium every Christmas.”

The claimant was now asked about March 2007 when she was alleged to have texted P in the U.S. to say that she (the claimant) would be going on holidays for three weeks that year. The claimant confirmed that she had texted P saying that P texted staff when P was away and said: “I did not say I was taking holidays. I asked for three weeks instead of coming and going.” The claimant said further: “I wanted to book early to get a better price. I took the liberty to book it. I got no answer from her. I just booked it. It’s very difficult to speak to her. She’s always rushing. I took my three weeks.”

The claimant confirmed that she had gone on holiday with a female companion (N). When it was put to the claimant that P had said to the Tribunal that the claimant had lied the claimant replied: “I told her that I was going away on family occasions. This is nothing to do with her. What I do is nothing to do with her.” The claimant added that P had got upset because a staff member in the Dungloe office had got a sore knee and that P had said that that staff member deserved a holiday and not the claimant.

The claimant told the Tribunal that in Dungloe P had called her and said that the claimant was not allowed to take three weeks in a row but that P had never said that, if the claimant did that again, the claimant would be “out”.

In June 2007 the claimant wrote to P that the claimant was hoping to take two (long) weekends in September/October but that, if the claimant were still part-time, the claimant would not have to ask for that. The claimant also told P that, if P wanted to get somebody else, that was fine with the claimant. The claimant “sent that letter from Dungloe to Derrybeg private addressed to” P. P had never said that she had got it but P once said that they needed “to talk about that letter”. The respondent’s representative here interjected that this had not been put to P and was told that P could be recalled to deal with it.

The claimant also told the Tribunal: “Yes, a few mornings I was late. It would be five minutes. No more than that.”

Regarding “that last Friday” the claimant stated that P had come in at about eleven or twelve in the morning and that P was to play at a concert. P had been in her office. When P left the claimant asked to leave at 5.30 p.m. and P had okayed this. That day was the claimant’s husband’s company’s Xmas dinner. The claimant “had to be ready for eight o’clock” that evening. The claimant rang her hairdresser to ask to be let know if there was a cancellation. In fact, the claimant did get a call to say that there was a cancellation. P “was playing music”. At 2.50 p.m. or 2.55 p.m. left the post and went for a hair appointment.

Asked at the Tribunal hearing if it had been normal for her to leave work for a hair appointment, the claimant replied that it had not been normal but said that a colleague (AT) had left for a hair appointment at 3.00 p.m. on the Wednesday. The claimant told the Tribunal that, when she (the claimant) left the hairdresser, she got angry messages from P. The claimant decided that she would not reply but that she would talk to P on the Monday.

On the Monday (18 December 2007) the claimant “felt bad” and told L (a the respondent staff member). The Tribunal was referred to a phone record and a medical certificate. The claimant’s first call had received no reply. Asked about that day, the claimant said that she got a (medical) appointment at 4.00 p.m. on that day with her doctor who gave her the week off. The claimant “had bad abdominal pain”. The next day, she sent her son to the office with a medical certificate. He was coming back from school in the afternoon. The claimant’s husband was away. The claimant could not go. Her son went to leave in her medical certificate. He told the claimant that P had said that the claimant would hear from P. The claimant got a text from P saying that P had dropped in a dismissal letter because P could not find the letterbox.

Recalled to give further testimony, P said that in 2006 she had found a memo in the post tray which said that the claimant would be absent on certain dates. P then called in the claimant to tell the claimant to ask P in advance and to write dates in the book as was the practice for twenty years. The claimant later told P that she was going “for a procedure”. A medical certificate covered a period starting on 20 December.

P told the Tribunal that she had called the claimant in to the office to tell the claimant not to just leave a memo. The claimant said that she needed “a procedure” and that it was convenient for her to get it done during her holidays. In reply, P told the claimant that she had to ask P in advance. The claimant had booked to go on holiday and finished working on 14 December. The “procedure” was done on 20 December.

Asked why this had not been mentioned in the dismissal letter, P replied that the claimant had not thought that there was a problem but that P had told the claimant that there was a problem and that the claimant could not just do “these things”. P told the Tribunal that “it was literally the week before that she left the memo”.

Further questioned about this “procedure”, P replied that the claimant had just referred in the memo to going on holidays from 15 December to a date in January and that the claimant had only told about the medical “procedure” when P had asked about it. The claimant told P “that she had arranged to have it done while she was out there”.

Asked if the medical “procedure” had made no difference, P said that it had all been about holidays “till I pulled her up”. P had not asked for a medical certificate.

P told the Tribunal that she had got no letter from the claimant about working full-time or part-time. P added that, when she had phoned the claimant’s home and found that she was in Bulgaria, she had told the claimant that she had to go back to part-time. In P’s house the claimant had asked about two (long) weekends but that was to be the end of it. The claimant had been angry and had been saying that her mother was not getting any younger but had later thanked P for supporting her while she had been crying. P reiterated that she had not got the letter and she added that it was “nonsense” to allege that P had acknowledged getting it by saying that she would talk to the claimant (about it).

**Determination:**

Having carefully considered the evidence adduced, the Tribunal was not satisfied that the respondent’s procedures were adequate or that the claimant was guilty of gross misconduct. The claim under the Unfair Dismissals Acts, 1977 to 2001, succeeds. Taking into account the claimant’s contribution to her dismissal and her subsequent efforts to mitigate her financial loss, the Tribunal deems it just and equitable to award the claimant compensation in the amount of €9,000.00 (nine thousand euro) under the said legislation.

The Tribunal does not find that the respondent was in breach of the Minimum Notice and Terms of Employment Acts, 1973 to 2001. The claim lodged under the said legislation is dismissed.

The Tribunal dismisses the claim lodged under the Organisation of Working Time Act, 1997, for want of prosecution.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)