

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

UD1153/2008

- *claimant*

MN1058/2008

against

Employer

- *respondent*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr R. Murphy
Ms K. Garvey

heard this claim at Dublin on 5th June 2009

Representation:

Claimant(s) : Ms Barbara Mebtouche, Triana, Independent Advice &, Information Bureau,
13 Store Street, Dublin 1

Respondent(s) : In Person

The determination of the Tribunal was as follows:-

Respondent's Case:

The General Manager (GM) gave evidence. The respondent had two premises, Abbey Street and Nassau Street in Dublin. The respondent's business was a franchise of a food outlet and they reported to an overall franchise head office. The claimant commenced employment in December 2007 and was mainly based in Nassau Street. The claimant's husband (D) was also employed by the respondent and worked along side her in Nassau Street.

The claimant became pregnant. She hated to be parted from her husband (D) and would not work in the Abbey Street premises. The other staff were not happy with this. Staff also complained when they had to work with the claimant and D as they said they were bullied by them. The claimant and D would not speak to the other staff or they would only speak in Polish. She spoke to them; they apologised and said they would no longer do it. However, as a result new staff were no longer sent to the Nassau Street premises for training.

On September 17th D contacted the witness by phone and informed her that they were leaving and was giving her two weeks notice. They intended to leave on October 3rd. The witness explained that D did most of the talking, as his English was better than his wife and he discussed matters it was always concerning both. She spoke to the Managing Director (MD) about the matter and it was agreed they could finish a week earlier.

On September 26th they received a call from the franchise head office. A delivery driver had been to the Nassau Street premises. The claimant and D had been complaining about the respondent company. They told the driver, and customers present, that they were being let go, they had no money and the baby was nearly due. She contacted the Manager who had overseen the two premises and asked her to go to the Nassau Street branch and speak to the claimant and D. D had stormed out but the claimant remained until the respondent's second witness arrived. D returned and they asked for their P45's.

She explained that their wages and a card was left in the Abbey Street premises for them to collect, which they did not. These items could not be forwarded to the claimant, as she did not have her address in Poland. Wages were always left in the Abbey Street premises for collection.

On cross-examination she said that the claimant's maternity leave was to start in October and everyone knew they would be going home then, as the claimant wanted her child to be born in Poland. The claimant and D's P45 were ready to be given to them on September 26th as she had told D that he and his wife were finishing up the following week and would be paid a week in lieu of notice. D asked if they could work for a few days after they were finished up and be paid cash in hand. She stated that she had not dismissed the claimant; she had left of her own accord.

The claimant had asked for her P45 to have a later date on it in order for her to obtain maternity benefit but the witness refused.

The Managing Director (MD) gave evidence. The first and third witnesses for the respondent ran this business for him.

He acquired the business in 2006; the claimant and D had already been working for the previous owner for 3 years. He informed that he might expand the business and they could be promoted to Managers. There were no problems with the claimant or D and they were treated very well by the company. They told him the Nassau Street premises were like "home from home". D would work in the Abbey Street premises but the claimant refused. He told the Tribunal that he would employ the claimant and D again.

On cross-examination he explained that if the Nassau Street premises got busy the Manager of the two shops would cover as no one else wanted to work with the claimant and D.

A second Director, and wife of the MD, gave evidence. She received a call from the franchise head office concerning the claimant and D giving out about the respondent in front of customers. She went to the premises, the claimant was present but soon left. D asked for their P45s. The witness stated that the claimant's English was very poor, her husband D spoke for both of them.

Claimant's Case:

The claimant gave evidence. She stated that she had not given in her notice on September 17th and had not intended to leave until October. When asked she said that she had not asked to work cash in hand.

GM informed her husband (D) that they were finishing up on Friday September 26th. On September 26th she had told the bagel deliveryman that it was their last day, he said that it was not fair on them. She did not expect to receive her P45 that day. She had intended to return to work for the respondent after her maternity leave.

On cross-examination she stated that she had not told the deliveryman that she had no money and had to go home to Poland as she had been let go. There were no customers on the premises at the time.

The claimant's husband (D) gave evidence. He rang GM on September 17th to give his notice only. He and his wife were returning to Poland on October 6th. His wife (claimant) had intended to return to work after the baby was born. They were given their P45s on September 26th but were not told their cheque for their notice was in the Abbey Street premises.

On cross-examination he said they had problems with the last cheques they had received, they had been cancelled.

Determination:

Having heard the evidence adduced by both parties the Tribunal finds that the claimant was not unfairly dismissed. Evidence was given by two of the respondents' witnesses that the claimant had very little English and her husband (D) always spoke on behalf of both of them. The claimant's husband had rung the General Manager and informed her that both of them were leaving.

Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails. The claim under the Minimum Notice and Terms of Employment acts, 1973 to 2005 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)