

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee-*Claimant*

CASE NO.
UD311/2009

RP310/2009
MN308/2009

against
Employer-*Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. P. Clancy

Members: Mr. G. Phelan
Dr. A. Clune

heard this claim at Ennis on 11th June 2009

Representation:

Claimant: Mr Stiofán Fitzpatrick, Stiofán Fitzpatrick Solicitors,
Garna House, Main Street, Sixmilebridge, Co. Clare

Respondent: Mr. Lorcan Connolly B.L. instructed by Mr. Stephen F. Nicholas, Nicholas Nolan
Solicitors, Parnell House, 50-52 Parnell Street, Ennis, Co. Clare

The determination of the Tribunal was as follows:

Claimant's Case:

The claimant commenced work in the respondent's dry cleaning business in March 1997. There were six employees at that time. The claimant and her colleagues had a break at 10am and 4pm. They rotated lunch break, as the shop remained open throughout lunch.

In 2000 there was a fire at the respondent's premises. When the business returned to the premises the claimant undertook the extra duty of pressing, as another employee had left the respondent's employment. The claimant's wages increased slightly. The claimant worked 45 hours per week and she continued to take breaks throughout her shift.

In 2003 the workload decreased and an employee was made redundant. A new premises was purchased. The dry-cleaning and launderette part of the business moved to the new premises and only the shop remained at the location where the claimant continued to work. At this time the claimant was the sole employee in the shop.

When she was working the claimant went to a nearby shop to purchase some items for her break. At lunch the claimant might also go to the shop to buy some lunch. On these occasions the shop remained open, as the director had instructed. This instruction was given to the claimant after the director had discovered she closed the shop to take her break. The claimant was upset by how the director spoke to her on this occasion. After this incident the claimant consumed her lunch without having a proper lunch break.

One of the claimant's duties was to record a list of cash intake. The list should have corresponded to the figure on the till but there were occasions when it did not balance. The claimant also experienced difficulties when some customer items were not returned from the new premises. On these occasions the claimant had to address irate customers. In or around September/October 2007 the claimant submitted her resignation to the director but it was not accepted. The claimant continued in her employment.

Sometime in 2008 the claimant attended at her local Citizen's Information. The claimant wanted a proper lunch break provided to her and she also raised the fact that she did not have a contract of employment. Subsequently, in May 2008 the claimant received a contract of employment from the respondent, a lunch break and her hours reduced to 40 hours per week. However, the director began harassing the claimant once these matter had been sorted out by NERA. The claimant outlined such instances to the Tribunal including occasions when there were discrepancies with the till. The claimant subsequently submitted her resignation to the director giving him two weeks notice of her resignation. The claimant's T1A form stated her employment ended on the 26th August 2008.

Respondent's Case:

A director of the respondent gave evidence to the Tribunal that when the new premises opened the claimant raised with him the possibility of a redundancy payment. However, the director retained the claimant as the sole employee in the old premises, which was a collection depot for dry cleaning.

When the claimant submitted her resignation in 2007 the respondent did not accept the claimant's resignation immediately but allowed sometime for her to reconsider. When he returned from holidays he asked the claimant if she had made a decision and she informed him that she had made arrangements regarding her personal situation and the claimant continued in her employment. The claimant worked 45 hours and was paid for her breaks. However, when NERA became involved the director changed this arrangement immediately.

The director stated that when there was a discrepancy with the till he queried the discrepancy with the claimant but he did not make accusations against her. When the claimant told the director in 2008 that she was resigning, he requested her resignation in writing. The director replaced the claimant after her resignation with another full-time employee.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal finds that although the director failed to make reasonable enquiries as to the claimant’s reasons for resigning, similarly the claimant did not outline her reasons for resigning to the director. The claimant failed to satisfy the Tribunal that the conduct of her employer was such that she could not reasonably be expected to continue in her employment as stated in S.1(c) of the Acts. The claim for constructive dismissal under the Unfair Dismissals Acts, 1977 to 2007, fails.

The Tribunal finds that a claim for minimum notice does arise in this instance as the claimant resigned from her employment. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fails.

The Tribunal finds that a redundancy claim does not arise, as it was an agreed fact between the parties that the claimant resigned from her employment. The director stated in evidence that a full-time employee replaced the claimant after she resigned from her employment. Accordingly, the claim under the Redundancy Payments Acts, 1967 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)