

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD1060/2008

- *claimant*

MN980/2008

WT443/2008

against

Employer

- *respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms O. Brennan

Members: Mr J. Horan
Ms. P. Ni Sheaghda

heard this claim at Naas on 17th April 2009

Representation:

Claimant: Hanahoe & Hanahoe, Solicitors, 16 North Main Street, Naas,
Co. Kildare

Respondent: Mr. Andrew Croughan, IBEC, Confederation House,
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

The claim under the Organisation of Working Time Act, 1997, was withdrawn during the hearing.

Opening statements:

The claimant's representative said that defective procedures were used by the company. The claimant was never told who made the complaint nor was she given an opportunity to cross-examine witnesses. It was never pointed out to her that dismissal could be an outcome. She was accused of having drugs for sale in the canteen – Viagra or a substitute – which she denies.

The respondent's representative said that there was a report to the Management in March 2008 that the claimant had offered Viagra or a substitute for sale on the premises. An initial investigation was held and statements taken which were put to the claimant. Following the outcome of disciplinary procedure on 19 March 2008, the claimant was dismissed on 21 March 2008.

Respondent's case:

The claimant's Line Manager (AU) gave evidence that he got a report from a staff member that a drug was offered for sale in the canteen. This staff member didn't see the incident, but gave him 2 names of witnesses who did. He asked these witnesses to make formal statements, and they did so. On 3 March 2008 he got the claimant to make a statement, and the allegations were put to her. He and AM had a meeting with her – and her representative - on the same day, but no accusation was made to her at this stage, it was simply an investigation. The claimant's statements were inconsistent, at first she said that she had no tablets in her possession, but then changed her story to say that they were for her own personal use, and that she was only joking with the lads. The claimant was told at the meeting that it could be construed as gross misconduct and that it could lead to dismissal. The claimant was upset at this and was not fit to return to work, so they said that the matter would be investigated further. He said that he only took part in the initial investigation on 3 March 2008.

The Senior HR Facilitator (AM) gave evidence that he got a call from AU about a problem in the factory and attended the meeting with AU, RB, the claimant - and her representative, on 3 March 2008. It was a preliminary investigation at that stage. Formal statements were taken from two witnesses - ES and JE – on 4 March 2008. ES said that he was offered a viagra-like tablet for sale by the claimant. AM said that his involvement was to guide the process and take notes. The witness statements were read out and given to her. The claimant denied that she had any tablets, she then said that they were for her own personal use, and that she was on medication for stress and depression. His recollection was that she did deny that she showed any tablets to the two witnesses in the canteen. The claimant expressed her satisfaction with the conduct of the meeting.

At a subsequent meeting on 21 March 2008, RB said that considering all the facts it was decided that she had offered drugs for sale and dismissed. A letter confirming dismissal was issued to her on 26 March 2008, with leave to appeal. He attended the appeal hearing held by DK with the claimant and her legal representative, and the decision was made to uphold the dismissal.

He hadn't felt it necessary to record the mention of gross dismissal at the initial meeting, but said that it was mentioned. When asked how the claimant could have had the opportunity to cross-examine the witnesses if they were not at the meeting, he said that they could have been brought in if required.

The Production Manager (RB) gave evidence that ES said he was offered a tablet at a waste bin by the claimant. He took formal statements from witnesses to the incident. He met the claimant on 19 March 2008 and told her that she could be dismissed as a result of the incident. She was offered representation before the meeting. The dismissal was based on the description of the substance

offered to ES, which was researched on the internet by AM. He accepted that this was not explained to the claimant. Her evidence changed during the meeting, whereas the statements of the witnesses were consistent. He took advice from AM and decided that it amounted to gross misconduct. He only decided to dismiss the claimant after taking advice from DK.

An employee (ES) gave evidence that the claimant came to him in the canteen saying “ look what I bought in Amsterdam” and said that they were €30 each. He assumed that she meant by this that it was the purchase price. He said that she was not joking, but was serious. He didn’t see the need to report it because these tablets were normal in his country. He told JH, and she went to the manager. He thought that she did offer the tablets for sale.

An employee (JE) gave evidence that the claimant came to him selling Viagra. She told him it came from Amsterdam and the price was €30. ES was beside him at the time. She showed the tablet to him, it was green in colour. He didn’t think that she was joking.

Claimant’s case:

The claimant gave evidence that she remembered the incident on 3 March 2008. She said that she was called to the office by AU, who told her that someone had reported she was selling drugs. She was shocked to hear this and told him that it was not true. Five minutes later she met with AU, AM, and M. There was no written record taken of this meeting. She told them she wanted to go home and went on sick leave for a few days. When she went back to work she asked AM for copies of the statements of those who reported the incident, but was told she couldn’t have them yet. She then went to the Gardai who advised her to get a solicitor.

On 19 March 2008 she met with AM, MH, RB, and said that she never sold drugs. Neither ES or JE were at the meeting. She denied that she had changed her story. She told them that she had tablets for depression. Prior to the incident she was depressed and was out sick for a while. She said that she was happy with the conduct of the meeting, MH said that there was no proof of her selling drugs, so she thought nothing else would happen.

A further meeting was held on 21 March 2008. She said that she had joked with ES a few weeks before 3 March 2008, but had shown no tablets to him or JE on that day, and had never been to Amsterdam. She said that she had no tablets with her that day. She had differences with JH about work breaks, and became depressed. A meeting was held between her, JH and AM. As a result of this meeting, she and JH apologised to each other.

Claimant’s closing submission:

There is a conflict of evidence. The signed statements used were only signed on 24 March 2008, subsequent to the dismissal. The conduct of the appeal was unsatisfactory and was dealt with behind the claimant’s back. RB based his decision on the claimant’s statement and also research they made on the internet, which was not provided to the Tribunal. It was a deficient procedure.

Respondent’s closing submission:

We put it to the Tribunal that the procedures used were in accordance with the Fitzgerald v Credit union case, that there must be bona fide compliance. Any employer must treat allegations of drug dealing with great seriousness. These allegations were put into evidence.

Determination:

Based on the evidence adduced, the Tribunal finds that the claimant was unfairly dismissed and awards her €46,522.00 under the Unfair Dismissals Acts, 1977 to 2007.

In addition it awards her €894.66 (being the equivalent of two weeks gross pay) under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)