

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

*-claimant*

CASE NO.

UD34/2009

MN40/2009

against

Employer

*-respondent*

Under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Mr J. Hennessy  
Mr D. McEvoy

heard this claim at Waterford on 12th May 2009 and 16th July 2009

#### **Representation:**

Claimant : Robert O'Neill, Brian J. Chesser & Co, Solicitors, 19 Catherine Street, Waterford

Respondent: Mr. Fergus Appelbe, Appelbe And Company, Solicitors, 7 South Mall, Cork

#### **The determination of the Tribunal was as follows:**

##### Respondent's Case:

A director of the company gave evidence to the Tribunal. In June 2008 the claimant commenced employment as supervisor in one of the respondent's shops in the southeast. As part of her role the claimant prepared a daily report for accounting purposes. The claimant also submitted a weekly sheet to Head Office for the purposes of calculating wages.

The director met with the claimant in December 2007 to give her a Christmas bonus. The claimant told him the bonus was not enough and he told her that it was all he could afford. On this occasion the claimant mentioned that she did not get on well with the Area Manager but she did not mention anything about bullying on this occasion.

On the 5<sup>th</sup> February 2008 the director was informed anonymously that the claimant was attending very late for work and that she was intimidating other staff into covering for her. The director immediately attended at the shop. The claimant was attending at Head Office on this date. The director examined available CCTV footage for a period of two weeks. It was clear from the CCTV

footage that the claimant was not on the premises at the times she was claiming in her timesheet. Another employee told the director that the time on the till was changing erratically and he set out to investigate this also. The director provided a specific example of the date of the 21<sup>st</sup> January 2008 to the Tribunal. On this date the till reading showed a time of 9.02am. However, the CCTV showed there was no staff on the premises until 9.30am. The CCTV showed the claimant arriving to work at 11.15am on that date. The claimant had signed off on her hours that day as being 9am to 6pm. The director provided details of other “persistent breaches” within the two-week period to the Tribunal. The CCTV footage specifically showed the claimant pressing the button on the till that changes the time.

On the director’s instruction the Area Manager suspended the claimant with full pay on the 6<sup>th</sup> February 2008, pending the outcome of a disciplinary hearing. However, the claimant raised a number of issues before she would attend the disciplinary hearing. The claimant at first stated that she did not have time to prepare and then she requested an agenda for the meeting. Another director wrote to the claimant on the 7<sup>th</sup> February 2008 outlining the agenda for the meeting on the 11<sup>th</sup> February 2008 as:

1. *Suspected input for pay for hours not worked*
2. *Suspected tampering with the shop cash register.*

The letter outlined to the claimant that she was suspended with full pay until a full investigation was conducted. The claimant was informed that should she fail to attend the disciplinary meeting it would be conducted in her absence. The meeting was rescheduled to the 14<sup>th</sup> February 2008 to allow the claimant more time to prepare. On the 13<sup>th</sup> February 2008 after numerous attempts to contact her, the claimant telephoned to say she had not had sufficient time to prepare for the meeting and her counsel had advised her not to attend. The claimant was informed that the meeting was re-scheduled twice and that if she did not attend on this occasion the meeting would be conducted in her absence. The claimant was warned there were two possible outcomes if she did not attend. The first possible outcome was that she would be dismissed. The second possible outcome was that she would be suspended without pay. The claimant did not attend the meeting on the 14<sup>th</sup> February 2008 and the director made the decision to suspend the claimant without pay. He communicated this decision to the claimant by letter dated 14<sup>th</sup> February 2008. He invited the claimant to attend a meeting on the 27<sup>th</sup> February 2008 as a final attempt to afford the claimant an opportunity to represent herself and explain her actions.

Subsequently, the claimant wrote a letter dated the 23<sup>rd</sup> February 2008 to the respondent, which stated that she would be unable to attend the meeting on the 27<sup>th</sup> February 2008 due to illness. A medical certificate accompanied the letter. The respondent acknowledged the letter and medical certificate and it was requested that the claimant would inform the company when she was well enough to attend a meeting. Subsequent correspondence ensued between the solicitors for the parties.

A disciplinary meeting was held on the 19<sup>th</sup> May 2008. The claimant stated at this meeting that the Area Manager bullied her and that she was suffering from a medical illness. The claimant would not divulge the nature of her illness at the meeting. The claimant stated that her illness was the reason she was late for work. The claimant said she could furnish the respondent with a note from her doctor outlining her medical appointments and that the appointments would coincide with the times she was not present in the shop. This document was requested from the claimant but the company did not receive it. From the meeting the director was satisfied that the claimant had tampered with the till. A letter dated the 11<sup>th</sup> June 2008 was sent to the claimant informing her that

she was dismissed from her position. The claimant had falsified information which caused a loss to the company as they were paying employees for hours not worked.

The HR Manager was office bound for the first six months. During this time she met with the claimant approximately every 2 weeks while the claimant was placing orders for the shop she managed. There were minor issues with the claimant's reports, which were discussed and resolved. The claimant managed her staff and reported their hours, similarly was trusted to accurately report her own hours. There was no Contract of Employment in place.

On the 6<sup>th</sup> of February the claimant was informed by the Area Manager that she was suspended with pay as she was suspected of claiming hours she did not work. The claimant was asked to contact the HR manager to arrange a meeting to discuss the problem. After numerous phone calls the claimant informed the respondent that she was advised not to attend the meeting given that she did not have enough time to prepare. An agenda and a letter confirming the date of the scheduled disciplinary meeting was sent to the claimant.

The claimant declined to meet with HR so was suspended without pay, informed of this in writing and given a re-scheduled date of 27<sup>th</sup> of February for the disciplinary meeting. The claimant refused all contact made by the respondent but continued to issue them with Medical Certificates, the first covering the 27<sup>th</sup> of February disciplinary meeting. The HR Manager wanted to meet the claimant to hear the explanation for her actions. If there was a valid explanation for altering the time clock on the cash register and claiming extra time worked the claimant would have been re-instated.

The claimant's solicitor requested the CCTV footage of the claimant altering the clock and was furnished with the evidence. The HR Manager offered to meet the claimant's solicitor with her laptop for ease of viewing. The claimant and her solicitor had the opportunity to view the CCTV evidence supporting the respondent's accusations. The claimant did not dispute the evidence.

The claimant agreed to a disciplinary meeting scheduled for the 19<sup>th</sup> of May in a Hotel in Waterford. The claimant's explanation for her lateness was, that she was suffering from a workrelated stress illness. The claimant said she could provide proof of her illness. The claimant's accusation of bullying by the Area Manager inducing the illness was first aired at the disciplinary meeting. There was ample opportunity to discuss these allegations as they arose if the claimant had so wished. The HR manager informed the claimant that any issues including bullying could be discussed with her. There was a Health & Safety statement displayed on the premises. The respondent did not investigate the accusations of bullying made by the claimant.

The respondent never received proof of the claimant's illness after numerous attempts to contact her and her solicitor. The respondent decided to terminate the claimant's employment. The claimant was sent a letter dated the 18<sup>th</sup> of June enclosing her P45 and a cheque for outstanding annual leave entitlement.

The Area Manager has been working with the respondent for 16 years and has never before been accused of bullying. The Area Manager had an argument with the claimant over her time keeping but it was quickly resolved and they went for coffee afterwards. The Area Manager was instructed to inform the claimant of her suspension and instructed her to contact the HR Manager. There was an issue over the shop signage as the claimant wanted the sign replaced after it had blown down but the Area Manager had problems locating a tradesman to complete the job at a reasonable price. The claimant had decorated the shop for Halloween with decorations purchased at a competitors, the Area Supervisor spoke to the claimant about the incident. The Area Manager disputes the

accusation made by the claimant that ‘she would put something round her neck and strangle her.’ The claimant was not scared of her just standoffish.

### Claimant’s Case:

The claimant was not aware of an existing Health & Safety Statement. The claimant asked for a contract in order to verify her job description instead she was told she was a supervisor and given duties. A few months after the claimant started working for the respondent, she was required to go to the head office every two weeks to carry out the shop ordering. At no stage during this period did anyone inform her of the grievance procedures.

The time and date was wrong on the cash register, the claimant organised to have it fixed. The claimant was able to alter the cash register clock from that point on. The claimant contacted the Area Manager to request permission to buy decorations to decorate the shop for Halloween. The next time the Area Manager visited the shop she made an issue of the purchase of the decorations.

The Area Manager used bad language and shouted at the claimant in front of customers, the claimant informed her she wasn’t happy being spoken to like that, the Area Manager said she was just having a bad day. The claimant felt intimidated and spoken to in a degrading manner by the Area Manager. The claimant told a director of the company how she felt and he said ‘I’m sorry you feel that way.’ The director did not support the claimant and the overall working conditions led to a stress related illness.

The claimant attended her GP in July with her symptoms, which was diagnosed as a Stress related illness, and she was referred to a consultant. In January the claimant was regularly late for work due to her illness and altered the time on the cash register clock to cover her lateness. The sales sheets signed were to verify that the money taken in was counted. The claimant did not pay attention to the hours on the sheet – they remained the same regardless of working late or starting early for all staff. The time clock was altered out of fear not in order to steal. The claimant did not inform her employers about her illness, as she was worried about confidentiality.

The Area Manager arrived at the shop and informed the claimant she was being suspended due to being consistently late. Following this the claimant contacted a Union and the Citizens Information Bureau for advice. The Citizens Information Bureau advised the claimant not to attend a disciplinary meeting without a full agenda. The claimant declined the offers of a disciplinary meeting until she received the agenda. The re-scheduled date for the meeting was cancelled, as the claimant was sick. The claimant was then suspended without pay. At the disciplinary meeting in the Hotel in Waterford the claimant informed her employers of her illness and the fact it was due to bullying by the Area Manager. Following the meeting the claimant received a letter dismissing her.

### **Determination**

Having considered all the evidence the Tribunal finds that the dismissal was fair, consequently the claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

The Tribunal arrives at the above decision having considered the evidence as presented, with particular emphasis on the claimant’s admission to falsifying the time on the clock of the cash register and signing inaccurate time sheets. The respondent identified this as Gross Misconduct and the Tribunal agree with their decision.

The Tribunal notes that there was no Contract of Employment or written Disciplinary and Grievance Procedures. The Tribunal is in no doubt that procedural fairness was not entirely followed by the respondent in effecting the dismissal of the claimant.

The Tribunal was made aware in evidence of a medical condition the claimant was suffering from but this was not communicated to the respondent until many months later.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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