

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO.
UD893/2008
RP767/2008
MN822/2008
WT369/2008

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
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M Gilvarry

Members: Mr D Morrison
Mr G Hunter

heard this claim at Letterkenny on 30th September 2009

Representation:

Claimant(s): Mr Patsy Gallagher
Gallagher & Brennan, Solicitors,
House B, Carnamuggagh Upper, Kilmacrennan Road,
Letterkenny, Co. Donegal

Respondent(s): No appearance or representation

The determination of the Tribunal was as follows:

The Tribunal noted that the claim had previously been withdrawn with liberty to re-enter, and was re-entered within the time limited.

There was no appearance by, or representation on behalf of, the respondent. The Tribunal is satisfied that the respondent was on notice of the hearing.

Claimant's Case:

The claimant commenced her employment with the respondent as a junior law clerk in July 2001. In May 2008 the claimant took a week's holiday leave. The employer also took holidays at this time. The previous month the employer told the claimant that two employees would have to be let

go, he later said not to worry about it.

During her holiday the claimant received numerous calls from the office looking for her help. On the Thursday of her holiday the claimant received a text from her employer. He was looking for information on a file. The claimant replied that she was on leave too and that she would need help with the file when they were back from leave. The file was a difficult title file, which had been ongoing for four years. The employer replied 'just give me the file'. The claimant sent a message stating 'ok and good luck with it'. The employer then replied 'where do you get off talking to me like that?'

The claimant then sent a text message to apologise and said that she meant nothing by it, only that it was a difficult file and that he would need to spend time on it. The claimant then received a message that the employer had sent to his mother stating that he was going to send his mother the text messages from him and the claimant and stating that he couldn't get a bit of peace.

The claimant was nearly three months pregnant and had spent her holiday leave at home. She was feeling very stressed and was very nervous about returning to work the following Monday. The claimant's partner sent a text message to the claimant's employer via her phone asking the employer not to text the claimant anymore outside of work. The reply came back 'what's it got to do with you, stay out of it and get a proper job'.

After a while the claimant received a further text message from the employer stating 'impasse reached'. The claimant sent a text message asking the employer to explain what he meant, but she just got the same message back again. The claimant took this to mean that she was being dismissed and replied that that was fine and she would collect her personal items on Monday.

The claimant went to the office on Monday with a relative. The receptionist told her that she was to leave her keys there and said that she had received a text from the employer that morning informing her that the claimant no longer worked there and that she, the receptionist, had been given a pay rise.

The claimant later received a visit from the Gardaí as the employer had accused her of stealing from the premises. The claimant explained to the Gardaí that she had only removed her own belongings. They said they would speak to the respondent further. The respondent continued to make allegations about the claimant after the Garda investigation ceased. There were also some letters from the respondent accusing the claimant of data theft. The claimant was paid until the 6th June 2008.

Two weeks after the claimant had left the respondent suggested that she be re-employed on a three month contract on less pay and without benefits such as health insurance. The claimant contended that the respondent was aware that she was pregnant, as she had told him. He had said congratulations, but bad timing. The claimant had previously told the respondent that she and her partner had been trying to conceive for two years and on numerous occasions he had spoken to her in crude terms advising her to avoid intercourse. The claimant believes that the respondent was in financial difficulty and that he did not want to pay her during her maternity leave.

Determination:

Based on the uncontroverted evidence of the claimant the Tribunal finds that she was unfairly dismissed. We find the appropriate remedy is compensation and giving credit for monies already

paid by the respondent, we award the claimant €17,000.00 (seventeen thousand euro).
The Tribunal dismisses the claims under the Minimum Notice and Organisation of Working
Time and Redundancy Payment Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)