

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE – *claimant*

CASE NOS.
UD845/2008
RP719/2008
MN779/2008
WT348/2008

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: Ms. C. Gleeson B.L.

Members: Mr. C. Ormond
Mr. S. O'Donnell

heard this claim at Dublin on 24th November 2008 and on 6th October 2009

Representation:

Claimant: Mr. Kevin Maguire B.L. instructed by Mr. Kevin Ryan of Ryan & Ryan Solicitors,
5 St. Brigid's Road, Clondalkin, Dublin 22

Respondent: XXXXXXXXX

The determination of the Tribunal was as follows:

The claims under the Redundancy Payments Acts, 1967 to 2007, the Minimum Notice and Terms of Employment Acts, 1973 to 2005, and the Organisation of Working Time Act, 1997 were withdrawn.

Claimant's Case

The claimant gave evidence. She started work around Easter 2003. She looked after the alterations section. She never had problems with the original owner.

In March 2008, the original owner sold the business. She continued looking after the alternations. There was one major customer that she always dealt with personally.

In May 2008 she went on holidays. When she returned the owner took her to a local coffee shop for a meeting. He showed her a number of dockets from the major customer that he had found in a drawer. He demanded an explanation. He told her it was fraud and theft to hide the dockets in a drawer.

She explained that when he took over the business, she told her contact at the major customer that the business had changed hands and that he should contact the new owner to agree that the old arrangement would continue. This was done. The major customer was allowed to run a tab. Every 4 to 6 weeks she made up the invoice and sent it to the major customer. She had not sent out an invoice since the business was sold.

The manager knew about the arrangement and so did her colleague. She believed that the owner knew about and had agreed to the arrangement. At the meeting the owner said he knew nothing about the dockets. He then asked about the dockets for the period January to March, she told him it was none of his business as it was before his time. The owner threatened to call the Gardaí.

She told the owner that the arrangement had been put in place by the previous manager. The owner then told her to go back to work. He intended speaking to the previous manager. Due to a domestic difficulty she had to leave work early that day.

The claimant was not at work on the following day, Tuesday. On Wednesday the owner phoned her at work to say that there would be a disciplinary meeting at noon the following day at the local coffee shop. She could bring a representative or come on her own. On Thursday morning an hour before the meeting she was given a letter alleging fraud and theft. She nearly died when she saw the letter.

She brought her colleague to the meeting. There was not much privacy at the local coffee shop. She did not want to have a meeting until she consulted a solicitor. The owner's advisor said he wanted to ask her a few questions. The advisor wanted to know if she used the till. She answered no. He asked her if she did alterations on her own time. She replied that in the past she had on occasion. She was asked about other members of staff. The meeting ended at about 1.30pm. She felt sickened and afraid.

The next week the owner was on holidays. At work the manager was watching her. Every time a customer came the manager rushed to the counter. The atmosphere in the shop was terrible. The claimant felt unable to work that way. On the Friday she went to her doctor. She was out for 4 or 5 weeks. Then she sent in her resignation.

Application

At the start of the second day's hearing the respondent made an application to have the hearing adjourned. His advisor had just come out of hospital and was still too ill to attend.

Determination of Application

The Tribunal considered the application carefully. The hearing finished early on the first day to facilitate the respondent. Later an application for a postponement was granted to the claimant. The Tribunal considered that the owner knew for some time that his advisor was ill had sufficient time before the day of the hearing to instruct an alternative representative. The postponement application was refused.

The claimant's colleague gave evidence. She accompanied the claimant to the meeting on 29 May 2008. The claimant was reluctant to continue with the meeting. The owner and his advisor asked the claimant about the dockets. She said that the major customer would bring in an article for alteration. When the work was done a docket was put in the drawer. The colleague agreed with this explanation. This arrangement was put in place by the previous manager. The new manager knew about the dockets. The new manager told the owner about the dockets. The arrangement continued as before.

Respondent's Case

The owner gave evidence. When he took over the business in March 2008, he met the staff and assured them that they had a good employer. The dockets related to work done on the premises but the business got no benefit from the work. He did not threaten the claimant. However he did say that if a fraud were uncovered he would inform the Gardaí.

He did not want the claimant to leave. His interest was in finding out where the money went. Money was paid into the shop and it did not go through the bank. He knew that alterations were done in the shop. He only found out about the dockets in the drawer when he approached the major customer looking for business and was informed that his business already did the work.

Determination

The Tribunal carefully considered the evidence adduced. When an employer discovers an anomaly in handling the income to the business, he must investigate. The Tribunal finds that the investigation in this case was inadequate and conducted without recourse to proper procedures. In a claim for constructive dismissal the onus is on the claimant to satisfy the Tribunal that it was fair and reasonable to resign given the circumstances of her employment. The Tribunal finds that the claimant was constructively dismissed. She is awarded €4,500.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)