

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE

against

EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997**

CASE NO.

UD857/2009

MN893/2009

WT375/2009

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr J. Goulding

Mr J. Maher

heard this claim at Dublin on 24th February 2010

Representation:

Claimant: Ms Sinead Curtis BL instructed by Mr. Fabian Cadden,
Fabian Cadden & Co., Solicitors, Main Street, Dunshaughlin,
Co. Meath

Respondent: In person

Background:

The respondent is a large retail food store, circa 5000 ft², specialising in Eastern European foods. There are over 2000 lines of food produce in the store. It is an employee's role to check the stock levels on a daily basis and to order replacement stock. This ordering was initially done "by hand" and then done by computer data entry ordering. The claimant had started as a salesperson and her duties included manning the cash tills and stocking shelves. When she got more experience she worked as a supervisor.

The respondent contends that the claimant was dismissed because she refused to carry out a directive of management. The claimant contends that she was dismissed because of a verbal altercation with the then girlfriend of one of the company directors.

Respondent's case:

The Tribunal heard evidence from a witness for the respondent. He explained that the claimant was dismissed summarily because she did not perform her duties, that is, to sustain the warehouse stock. On 22nd December 2008 she refused to order warehouse stock and she also encouraged others not to

do same.

The claimant got a first verbal warning in September or August 2008. She received three minor warnings. On 04th December 2008 she got a minor written warning for allowing a member of the public onto the premises when the shop was not open. She also received minor verbal warnings on 15th October and 18th November 2008, for taking extended smoke breaks.

Sometime towards the end of her employment the claimant was asked to give an order for meat to the meat department and she refused. Her excuse was her poor knowledge of English; also that she was too busy. After that incident the claimant was given a written warning for another incident, which was of the same type, i.e. refusing a management directive.

The final incident and the reason for her dismissal was on or about 22nd December 2008, whereby she refused a management directive and also encouraged others to do the same. The fact that the claimant was in charge, supervising, when the manager was not around adversely compounded the matter.

The claimant had started as a salesperson and her duties included manning the cash tills and stocking shelves. When she got more experience she worked as a supervisor. She was a supervisor when the manager was not present. Therefore if senior staff were undermining discipline and encouraging other staff to do the same "it was impossible to run a business".

The business was not like other Irish businesses as their customers were not Irish (Russian Latvian, Lithuanian). It was not so much about the fact that the claimant had bad English their products were labelled in English Russian and Lithuanian.

In cross-examination it was put to the witness that the claimant would say there was a verbal altercation with the then girlfriend of one of the company directors and this led to her dismissal. The witness replied that he was not aware of the incident. The witness explained that the claimant refused to do as he had asked her to. When asked about the meat ordering system the witness explained that you did not have to be computer literate to do the ordering, it took just a half hour to train someone to use the computer. He himself personally trained everyone on the use of the computer.

The Tribunal asked the witness why the letter of dismissal was not in both English and Russian and he explained that there was no particular reason. The Tribunal asked if he had told the claimant in Russian why he was dismissing her, and he said that he had.

Claimant's case:

The claimant gave evidence through the means of an interpreter. She explained that she was in Ireland since 2006. She commenced work with the respondent in 2008. Her duties involved operating the cash register, stocking and washing shelves. She opened and closed the shop, was a keyholder. She deposited money to the bank. Also got change for the tills. It was never her job to place meat orders. Mr. EG did the meat ordering. She did sometimes order fruit and vegetables.

The claimant stated that it was not true that she was trained to use the computer and she did not use the computer in the store.

She was not given a contract of employment until 2008 and the contract was in English. "Her dealings" were in Russian.

She only received one warning letter and this was the letter of 26th September. She never let a member of the public onto the premises outside shop hours. She never encouraged other workers not to do what the employer said.

Regarding an incident between the former girlfriend of a director of the respondent and the claimant. The claimant explained that the girl arrived and asked her to put DVD's in a particular order. She refused to do this as she had her own work to do. Then a manager arrived and told her to do the work that she had been doing, that is to carry on the work that she had been doing (Not to put the DVD's in order).

On or about 23rd December 2008 the previous witness called her to the office to go to a meeting. She was not told what the meeting was about. She went to the meeting. He told her that she had not carried out her duties properly and that she was fired from that moment onwards. She asked him why and he told her that he did not have to explain anything to her. He told her to leave the shop immediately.

In cross-examination it was put to the claimant that she was dismissed because she did not do as he asked and not because of some incident with the woman. The claimant disagreed.

Determination:

There is a complete conflict of evidence between the parties in this case.

If the Tribunal were to accept the evidence of the claimant to be credible then the Tribunal would undoubtedly find for the claimant. On the other hand if the Tribunal accepted the evidence of the respondent it would undoubtedly find for the respondent. Discrepancies arose in the evidence of the claimant regarding whether or not she received a written contract, which she originally denied and then acknowledged having received. Further a signed copy of this document was furnished to the Tribunal.

Therefore, on balance, the Tribunal accept the evidence of the respondent and accordingly find that the dismissal was fair. The claim under the Unfair Dismissals Acts, 1977 to 2007, fails. This being a conduct based dismissal the claim under the Minimum Notice and Terms Of Employment Acts, 1973 to 2005, fails. It having been conceded on behalf of the claimant that she received her holiday entitlements a claim under the Organisation of Working Time Act, 1997 does not arise.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)