

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO
UD781/2009
MN802/2009

against

EMPLOYER

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: Ms E Kearney BL

Members: Mr T Gill
Mr G Whyte

heard this claim at Loughrea on 25th March 2010

Representation:

Claimant(s): Mr Derek Hampson
Bell & Carroll, Solicitors, First Floor, 21 Middle Street, Galway

Respondent(s): Mr Diorai Ford
John M. Ford & Son, Solicitors, 2 Montpellier Terrace, Sea Road, Galway

The determination of the Tribunal was as follows:

Claimant's Case:

The claimant was employed as a manager of a clothes shop in Galway. On December 23rd 2008 the respondent's husband, who ran the shop with his wife (hereinafter referred to as the general manager), asked to speak to her. He told her that a source had told him that she had given staffmembers items of stock as gifts and that she had taken items from the shop. The claimant asked who the source was but he wouldn't say. The claimant denied the allegations and asked to take a nearly lunch. He told her she could but that she wasn't to return.

She went to get her things. She confronted the staff member that she suspected was the source. The staff member denied it. The claimant said that she had been dismissed. The general manager suggested that they discuss the matter but the claimant refused, as she considered that the staff member was lying. She gave back her keys and left.

She believed that the staff member made the allegation in order to save her own job, as the shop was quiet and the claimant had told her that her hours would probably be cut first. The claimant also considered that they wished to get rid of her as she was the highest paid member of staff. The claimant did not think to explain at the time that she allowed staff members take items home to try on. She had not asked permission to do this, as she did not think she had to. She also brought stock between the shop in Galway and the other branch in Westport.

She received a letter from the general manager after Christmas stating that her job was still there and she should return. She believed that this letter was only sent to cover them as she had been to a solicitor. She was related through marriage to the couple that owned the shop and contended that she would never steal from them.

She met the couple on January 8th 2009. She brought a print out of a redundancy calculation and what they could claim back. It would mean that she wouldn't have a dismissal on her employment record. They refused and offered her job back to her. She declined as she did not think it was feasible after the allegations that were made against her and she did not wish to work with the staff member again. She believed that if she returned her hours would be cut until she would be forced to leave.

Respondent's Case:

The general manager gave evidence that he ran the clothes shop with his wife. On December 22nd 2008 he offered a staff member a gift of an item of clothing. She said she felt guilty taking it as the claimant had already given her the belt she was wearing. She also said she saw the claimant taking stock from the shop.

The general manager asked the claimant about it the next day. She got flustered and asked to take an early lunch. He disputed the claimant's allegation that he told her not to come back. He did not accuse her of stealing or dismiss her. He asked her if she wanted to discuss it with the staff member but she refused. She gave back her keys and left the premises and did not return.

He wrote to the claimant on January 5th 2009 to confirm that her job was still there for her. The witness and his wife met the claimant on January 8th 2009 and again told her that her job was still there for her. She said she didn't want to work with the staff member again. They refused to pay her redundancy as her job was still there.

He was unaware of the claimant's practice of allowing staff to take items home to try on. The first week she was employed she had asked to take an item home and he had refused and told her that it wasn't their practice.

Determination:

The Tribunal heard contradictory evidence from the parties and finds the respondent's evidence more credible. The fact of dismissal was not proven and therefore no dismissal occurred. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

The Tribunal dismisses the appeal under the Minimum Notice And Terms Of Employment Acts,

1973 To 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)