

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

EMPLOYEE

-claimant

CASE NO.

UD1372/2009

MN1362/2009

WT598/2009

against

EMPLOYER

-respondent

under

**UNFAIR DISMISSALS ACTS, 1977 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 N. O'Carroll-Kelly BL
Members: Mr. L. Tobin
Mr S. Mackell

heard this claim at Naas on 7th July 2010

Representation:

Claimant: Mr Paul D'Arcy, D'Arcy & Co, Solicitors,
Claregate Street, Kildare, Co Kildare

Respondent: Mr. John Barry, Management Support
Services (Ireland) Limited, The Courtyard, Hill Street,
Dublin 1

Respondent's case:

The Tribunal heard evidence from the owner and MD of the respondent. He explained that the respondent business is connected to the International coal industry. Their database is one of the most advanced in the world. The whole company depends on the database. Without the database the company is "powerless".

The claimant's role was as his secretary, to update the database and to co-ordinate hotel conferences.

He himself was not in the office for long periods as he had to travel for work reasons and he had other business's to attend to. Therefore trust was an essential part of the relations between the claimant and him.

It was forbidden for the claimant to access the Internet on the company computer. The company

does not tolerate Internet use; the company had been compromised in this regard in the past, and had lost the company very many man hours.

The claimant's contract was opened to the Tribunal. In the contract it was stated that the use of Internet was forbidden and this was made clear to the claimant. If an employee used the Internet they could be instantly dismissed and this was made clear to the claimant.

He observed the claimant's computer open on to an Internet site and asked her about this. She admitted that she was using a site for her personal use. She apologised and he reminded her not to use the Internet. At the time they were disposing of old computers as they were getting new ones. She asked if she could have one of the computers that they were disposing of and he eventually gave her one of the computers.

Circa February 2009 he noticed that the claimant was using the Internet. He checked the history on the computer and printed out the history of net use. He then called ISME for advice. He was advised to suspend the claimant and to have an expert to examine the computer. He told the claimant that they would have the computer and after that they would have a meeting about the matter. And she could bring a friend to the meeting.

They met and he presented her with the documents showing her Internet usage. She admitted using the Internet for personal use. He told her that he spoke to ISME and that she could resign. The claimant offered to resign. The following day she phoned to say that she did not want to resign. He told her that he had accepted her resignation.

He dismissed the claimant because he could not trust her: the Internet usage could have put the company out of business.

Claimant's case:

The claimant told the Tribunal that she felt that two weeks before she was dismissed she felt that she was being given the cold shoulder.

She agreed that the respondent advised her about Internet usage. One instance she and a colleague used the Internet to book flights and they apologised. The owner told them not to let it happen again. She did use the Internet when the owner was not in the office. The usage did not interfere with her work, as her work would be done before she accessed the Internet. She had no complaints about her work.

Regarding her using the Internet before her dismissal; she immediately admitted that she used the Internet.

Regarding the meeting (her dismissal meeting) she was not invited to bring anyone to the meeting. She was given a choice of resigning or be dismissed.

When asked, the claimant agreed, she was not made aware of whatever rules the respondent followed regarding the dismissal.

Determination:

The Tribunal determine that the claimant fundamentally breached her contract, and the claimant did not deny that she breached her contract. Accordingly the dismissal was fair and the claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Regarding the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, the representatives told the Tribunal that that claim was not now in dispute in this case.

No evidence was adduced in relation to the claim under the Organisation Of Working Time Act, 1997.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)