

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

UD911/2009

MN941/2009

against

EMPLOYER

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. M. Gilvarry

Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this claim at Donegal on 9th February 2010 and 15th April 2010

Representation:

Claimant:

Mr Ralph McMahon, Suites 130-132, The Capel Buildings, Mary's Abbey, Dublin 7

Respondent:

Mr. Gerard McCanny, McCanny & Co., Solicitors, Wine Street, Sligo

The determination of the Tribunal was as follows:-

Claimant's case

The claimant alleged that she was accused by the respondent of asking a client of the respondent for a job. This request for employment was allegedly made while the claimant was working on the premises of the respondent and within earshot of other staff and customers.

A meeting took place between the claimant, the respondent and another manager on 17th March 2009. The claimant stated that at this meeting she was accused of asking a member of the public for a job. At the end of the meeting it was decided that there would be a week taken to consider the situation. The claimant felt that her future employment with the respondent was under consideration during this period. Between the end of this meeting and the date of her dismissal the respondent largely ignored the claimant. The claimant wanted to meet with the respondent to discuss the situation and put a written request to him. This letter was placed in the

respondent's "pigeon hole" as the claimant could not locate him at the time.

A further meeting was called for 22nd April 2009. As the claimant was on her way to the meeting another staff member rushed out of her office and asked the claimant "do you want me to do representation". However in her direct evidence this other staff member denied having said this. During the meeting the claimant said she wanted representation but the respondent declined this request. The respondent had said that the purpose of the meeting was to discuss the claimant's attitude and nothing else. At the end of the meeting the respondent told the claimant he was sacking her and to get out.

The claimant called one witness who confirmed that she was a colleague and friend of the claimant. The witness stated that she commenced employment with the respondent in June 2007, was promoted to manager in Sept. 2007 and is still employed with the respondent.

On the 22nd April 2009 the witness received a phone call from the respondent and he told her that he had to let the claimant go. However the witness did not want to discuss this with the respondent at the time because of her friendship with the claimant so she asked the respondent to talk to another manager instead. The respondent did this and afterwards the other manager suggested to the witness that she should ring the claimant and see if she was OK. The witness then rang the claimant and asked was she "alright" to which the claimant replied "not really". The witness told her to drive carefully.

Respondent's case

The respondent confirmed that a meeting had taken place between himself, the claimant and another manager on 17th March 2009. However he did not request this meeting. The claimant and the other manager had arrived at the respondent's office as they were having a dispute among themselves. The claimant and the other manager did not get on with each other. The respondent tried to settle things down. The respondent did not recall undertaking to meet with the claimant again at a later date.

On 22nd April 2009 a meeting took place between the respondent and the claimant at the request of the respondent. This meeting was conveyed in the respondent's office. The respondent had not received the letter referred to by the claimant at this time and had called the meeting to discuss reception, bookings and the roster. The claimant came into his office and asked him twice if he was going to sack her. She then asked for her P45 and stormed out of the office slamming the outer door. The claimant left the premises and never returned to work.

The respondent confirmed that there was a grievance and that he had received the claimant's letter in relation to this on or about 29th April 2009. He had not considered offering the claimant her job back in writing as the job was there for her and he presumed she knew that. The Respondent reiterated that he did not sack or let the claimant go and he was totally taken aback by what happened on 22nd April 2009.

Determination

The Tribunal carefully considered the evidence presented at the hearing. There was a clear conflict of evidence between the parties. However on the balance of probability the Tribunal prefers the evidence presented on behalf of the claimant and finds that she was unfairly dismissed on 22nd April 2009.

The Tribunal notes that the respondent in his evidence stated that the claimant was a good employee. However the preferred remedy of the claimant was compensation and not reinstatement.

The Tribunal awards the claimant €14,038.48 under the Unfair Dismissals Acts, 1977 To 2007. This award is fair and equitable and takes into account the claimant's efforts to mitigate her losses.

The Tribunal also awards the claimant €961.52, being two weeks wages in lieu of notice, under the Minimum Notice And Terms Of Employment Acts, 1973 To 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

