

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD533/2009

MN548/2009

WT234/2009

against

EMPLOYER

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr M. Noone

Mr. J. Dorney

heard this claim at Wicklow on 20th April 2010

Representation:

Claimant:

The Claimant in person

Respondent:

Ms. Mairead McKenna B.L. instructed by Ms Felicity Smith,
XXXXX

The determination of the Tribunal was as follows:-

Respondent's case

The first witness for the respondent was a Group Personnel Manager (here in after referred to as PM). PM confirmed that the claimant had been employed as a manager by the company and was dismissed due to absenteeism.

A booklet was submitted to the Tribunal which contained details of the claimant's absenteeism record from January 2004 to the date of dismissal. Also contained in this booklet were copies of correspondence between the parties. PM referred to this booklet and gave evidence in relation to respondent's written procedures in relation to absenteeism. According to PM the claimant was well

aware of these procedures as she was a manager.

However the event that led to the dismissal of the claimant was her unexplained absence from work from 12th August 2008 to the date of dismissal. The respondent received a phone call at 9am on that morning, from the claimant, saying that she would not be attending work that morning but hoped to be in that afternoon. However the claimant did not attend for work that afternoon or at any time since then. The respondent sent a letter by registered post to the claimant on 20th August 2008 requesting her to contact the author by 12 noon on Friday 22-8-08 to explain her absence.

This letter was returned by An Post to the respondent marked “not called for”. A further letter was sent by ordinary post on 28th August 2008 which concluded with “Unfortunately at this point I must advise that if you have not contacted the undersigned before five o’clock on Monday 01/09/08. I will have no choice but to terminate your contract and forward your P45.”

Subsequently, having received no communication from the claimant, the respondent issued a P45 by post. The date of cessation on this P45 was 8th September 2008.

The respondent confirmed that a complaint had been made, by the claimant, that she had been assaulted by another employee. However the respondent stated that this complaint had later been withdrawn.

Claimant’s case

The claimant gave evidence in relation to her absenteeism record. There was a short absence that the claimant alleged ought to have been treated as “Force Majeure” but was not.

The claimant also referred to an alleged assault against her by another employee. This incident was reported to her line manager but according to the claimant it was never withdrawn and was not properly dealt with.

In relation to her absence from 12th August 2008 to the date of dismissal the claimant copies of a medical certificate and two letters she claimed to have sent by registered post to the respondent on 13th August 2008. The claimant was asked for proof of having posted these letters but could not produce this.

Determination

The Tribunal have carefully considered all of the oral testimony given during the hearing of this matter together with all documentation opened to it and all legal submissions made. The tribunal are satisfied that the evidence adduced in relation to issues dating from the 13 January, 2004 to, but not including the 12 August 2009 are not relevant to the issue.

The Tribunal is satisfied that the claimant was absent from work from the 12 August until the date of her dismissal on the 2 October, 2008 without explanation. During that period of absence the claimant did not follow company procedure in relation to absenteeism. No creditable evidence was adduced by the claimant to explain her absence. The respondent company gave the claimant every opportunity to rectify the situation however the claimant did not avail of that opportunity and as a result the claimant’s claim under the Unfair Dismissals Acts must fail.

Furthermore as the claimant left her employment of her own volition, without giving notice to the respondent, she is not entitled to notice or payment in lieu of notice and her claim under the Minimum Notice And Terms Of Employment Acts, 1973 To 2005 must fail.

No evidence was presented in relation to a claim under the Organisation Of Working Time Act, 1997 and therefore this claim is dismissed for want of prosecution.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

