

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - *claimant*

CASE NO.
UD1591/2009
MN1566/2009

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: Ms. E. Daly B.L.

Members: Mr. D. Morrison
Ms. A. Moore

heard this claim at Donegal on 22nd April 2010
and 7th July 2010

Representation:

Claimant: Mr. Barry Creed McDermott Creed & Martyn, Solicitors, Constitutional
Buildings, Stephen Street, Sligo

Respondent: Mr Damien Crawford BL instructed by James Mannion & Co., Solicitors, Milestone
House, Irishtown, Athlone, Co. Westmeath

The determination of the Tribunal was as follows:-

Respondents Case:

The claimant was employed as a practice nurse with the respondent from the 14th May 2007 to 5th February 2009.

The respondent's representative explained that a decision was made on the 5th February 2009 not to renew the claimant's contract. They accepted that minimum notice should have been paid.

The respondent gave evidence on behalf of the respondent. He employed the claimant in May 2007 as a practice nurse; she worked on Monday, Tuesday, Thursday and Fridays. He had no difficulties with her work. The claimant commenced maternity leave in July 2008 and was due back to work in Jan/Feb 2009. They had called out to see her when the baby was born on a social visit. Arrangements were made for the claimant to contact the practice manager to arrange a date for her to return to work. The

claimant and the practice manager met for lunch on a Friday.(No date)

The following Wednesday 14th January 2009 the claimant arrived unannounced in one of his outlying surgeries. The claimant told him that the practice manager was a compulsive liar. The claimant's recollection of her meeting with the practice manager was totally different to that of the practice manager. The claimant told him that the practice manager had claimed that she had said she would be applying for more maternity leave; the claimant denied that she had mentioned maternity leave. The claimant also claimed that another employee had issues with the practice manager. Also that when they had visited her after the arrival of her baby the practice manager had pretended that it was her first trip to see her, when in fact she had been there before. The witness at this stage was not aware of any problems between the claimant and the practice manager. The claimant then told him that she had seen the practice manager signing a prescription for a patient, this had happened about 9/10 months earlier. The prescription was for an ointment for a rash and the practice manager had asked her for advice. The witness was shocked at this allegation made by the claimant and he set about investigating same. This unplanned meeting with the claimant lasted about 15-20 minutes, and before finishing he asked the claimant if she was sure about the prescription the claimant had replied she was certain.

He took some days to think about the allegation. About five days later he raised the issue with the practice manager. The practice manager went to the chemist and retrieved the copy of the alleged prescription. There were no other prescriptions issued in relation to this patient around the time of issue. The copy of the prescription dated 11th March 2008 was produced in to evidence and he confirmed that it was his signature on the prescription. As a result of this he arranged to meet the claimant in his surgery at 9.15am on the 5th February 2009.

He assumed that her contract with the surgery had ceased previously. At this meeting he showed her the prescription with his signature on it, the claimant agreed that this was the prescription in question and was taken aback at seeing his signature. The claimant recalled that she did not request maternity leave at the meeting with the practice manager as she knew the surgery did not pay maternity leave, however she did ask for a pay rise. He said to the claimant that if she had come to him saying that the practice manager was not telling the truth they could have worked it out, but because the allegation had not held out it had put him in to a difficult position. It was obvious that neither the claimant nor the practice manager could work together. If a staff member was caught writing a prescription it would be a sackable offence. The claimant was disinclined to believe that he did not believe her version of events. He informed the claimant that as her contract had ceased in November 2008 he would not be renewing her contract.

A meeting took place between him and the claimant between the 21st January and the 5th February, as he wanted to ensure that she was standing over the allegation. He arranged this meeting just in case the claimant had stated this allegation in the heat of the moment. The claimant did not back down. He did not recall explaining the consequences of the allegation to the claimant however he did tell her that if her allegation were true the practice manager would be out of a job. The practice manager has been working with him for eleven years. The claimant gave him no indication that she had difficulties with the practice manager apart from that signature of the prescription, the visits to the baby and that the practice manager was a compulsive liar. He did not think the claimant understood the gravity of the consequences if her allegation had been proven. He thought the allegation was an attempt to get rid of the practice manager. If the claimant was telling him as "to do the right thing" she would have told him months previously. The patient on the prescription is a relative by marriage to the practice manager. The allegation was damaging to the morale of the staff within the surgery.

In reply to a question from the chair, he explained that when issuing a prescription you type in on the

computer and select the medicine from a drop down menu, (other times he would hand write it) and print it off and sign it. The prescription in question shows two medicines prescribed in computer script and an additional medicine written in hand writing. Referring to the copy of the prescription in question, he explained that the practice manager had written “Desmotabs melt 120mg 30” but he had countersigned this add on. The claimant never put it to him that this was not his signature.

On the **second** day of the hearing the witness was cross-examined. He stated that he had approached the investigation of the issues raised by the claimant with an open mind. When put to him he did not recall saying the phrase “*if you think I’m sacking the (practice manager) you’re wrong*”. He said he had never told the claimant he was sacking the practice manager. He had no idea why the claimant had made the allegation against the practice manager concerning the prescription. When put to him he it was not unusual to have a typed prescription and a handwritten medicine later added and then initialled. He stated both signatures were his.

When asked he stated because of the serious allegation against the practice manager it was not a viable option to issue a verbal or written warning.

The practice manager gave evidence. She was 10 years working in the practice. The claimant joined in 2007. The witness had no problems with the claimant and considered her a friend. The claimant became pregnant and commenced maternity leave. She attended the Christmas party with her husband. When the claimant had her child it was arranged for the staff to visit her on a Wednesday and bring a present. The witness and her husband had visited the previous Sunday. She had asked the claimant not to mention it to the other staff. She felt that her and the claimant’s relationship had become strained during her maternity leave and did not keep in contact. The claimant would not answer her calls and this is why she went to visit her at home before the rest of the staff did.

The witness received a text from the claimant in January 2008 to meet and discuss her impending return to work. They met on a Friday in a local hotel on January 9th 2008. The atmosphere was friendly. Before she commenced maternity leave the claimant had been working 4 days for the respondent and 1 day in a practice in Sligo. She expressed concern about returning to work for a 5-day week. She did not want to give up her 1 day in Sligo as they paid her maternity leave. The respondent did not but the claimant wondered if they would in the future. The issue of a pay rise was never mentioned. She asked her if she would be happy with a 4-day week if she was paid maternity leave in the further, she replied yes. She told the claimant she would discuss it with the respondent and get back to her.

She spoke to the respondent whose initial reaction was negative but he asked her to ring around other surgeries to see what the common practice was. Her investigation found that paying maternity benefit was not the norm. She informed the respondent and said she would inform the claimant. He told her to text the claimant that he would think it about over the weekend and then get back to her. She again spoke to the respondent but he told her he was not in a position to pay maternity leave. She texted the claimant the word “negative”. She spoke to the claimant on the Friday before her return to work. The lady who replaced her was working her last day in the practice and the claimant was invited to join them for lunch. She told the respondent and he told her never to text the claimant again.

The claimant returned to work. On January 21st 2009 she had her first meeting with the respondent. He informed her the claimant had difficulties with her and was I sure what had happened at the meeting on January 9th. The claimant said she had discussed the idea of a pay rise and not maternity leave and had called her a compulsive liar. She told the respondent she had visited the claimant on maternity leave before the rest of the staff and why. She said that she did not think there had been any problems between them except for the issue of a patients call to the practice some time previous. She had been on a call to a patient and had asked the claimant not to speak to her when she was on the phone to a patient.

At the second meeting with the respondent she was told of the alleged fraud of his signature by her on a prescription some time ago. She was shocked at the allegation and asked had she proof. She told the respondent she would never have betrayed his trust. She recalled the day. It had been after lunch, the respondent was not present and a call was received from a patient's mother (her sister-in-law) concerning the application of a certain cream for her son (JF). The witness had been speaking to the mother and asked the claimant for advice on the matter. The claimant told her and she told her sister-in-law. The 2 creams were typed out on the prescription but her sister in law asked for another medication for her son – Desmotabs. She wrote the name and quantity on the typed prescription. She presumed she left the prescription in the place where all the others were left to be signed off by the respondent. She had never signed the prescription or put it in her bag.

She told the respondent at the second meeting that she would prove it was not her signature and went to the chemist to retrieve the prescription. She was given a copy of it and she gave it to the respondent. He said both signatures were his. The witness was very upset at the allegation and had to leave the premises for a ½ hour. The witness said she would never have done it; she would have lost her job and would never have been hired in a surgery again. The claimant had never raised the issue with her in the past. She stated that if the claimant had just received a warning the atmosphere would never had been the same. She could never work with her again.

On cross-examination she said she did not know what the claimant had to gain by making such allegations. She said the respondent had told her not to text the claimant again as he was aware the claimant had a problem with the witness. When asked she stated that the creams spoken of with her sister-in-law was for her son (JF). She refuted they had spoken about her other son (SB) and that his name was not on the computer system.

When asked about the special claim forms she said that either she or the respondent signed them. Sometimes she wrote his name on them but they did not leave the office, as the payment was made online. When asked she could not recall putting the prescription in the tray for the respondent to sign. She said it was quicker to write the extra medication on the printed prescription that retype and print it. When put to her she stated that she and the claimant had discussed a maternity leave payment and not a pay rise.

Claimant's Case:

On the **third** day of the hearing the claimant gave evidence. She told the Tribunal of her training and experience as a practice nurse. She had previously been employed full-time in a Sligo practice and had remained working for them 1 day a week when she was working for the respondent. She became pregnant and commenced maternity leave. Nearer to her return to work she texted the practice manager to meet and discuss her return to work. The claimant told the Tribunal that she had not wanted to return to work full-time with a new baby.

They met on January 9th and discussed the matter of full-time work and the practice manager said if the respondent was prepared to pay her maternity leave in the future would she continue working for him 4 days a week and give up her 1 day in Sligo (who paid her maternity leave). She told her that if he did not agree she would return on a 3-day basis. They also discussed the idea of a pay rise. The practice manager said she would get back to her and did tell her paid maternity leave was not an option. She was also told he did not want her working a 3-day week, he wanted a full-time nurse. She offered to job share but he did not want that either. She told the practice manager she would return to work full-time.

She received a call from the surgery's secretary telling her she was in big trouble, the practice manager

had stormed out of the respondent room saying “*that f****r wants to give (claimant) a pay rise*”. She was very upset and knew she had to speak to the respondent, as she had not suggested a maternity leave payment or a pay rise, the practice manager had raised the issues.

On January 14th 2009 she went to see the respondent at his Ballintra premises. She wanted him to know that she had wanted to reduce her hours, had not sought a maternity leave payment and that the practice manager had raised the issue of a pay rise. She agreed she had called the practice manager a liar but not a compulsive one. He told notes at the meeting, she did not. She told him she found it difficult to work with her. The claimant explained to the Tribunal that the practice manager could be difficult and would often ignore her. She also told them that she did not want the other staff to know she had visited her privately at home of that they shopped together.

She told him her registration was at risk and he asked why. She told him on the incident the previous March concerning the prescription. She saw the practice manager write the extra medication on the prescription and sign his signature. The name on the prescription was for JF but when she had spoken to the mother concerning the application of the cream they had discussed her other son SB, they were stepbrothers. The practice manager then put the prescription in her bag. The claimant noted the details in a diary but could not produce it to the Tribunal. The respondent said that he would think about what she had said and get back to her.

A week or so later the respondent texted her to meet him again. It was clear from the conversation he wanted to discuss the matter of the prescription and wanted more details. He said he had spoken to the practice manager but not about the prescription, as he needed more details. The meeting went on for about an hour and he told her he would get back to her. Later that evening she received a text to meet him the following Monday evening but she could not meet until Thursday, February 5th.

Fifteen minutes before they were to meet he texted her asking her to meet him in the surgery. Her husband drove her and waited outside. On arrival he asked was she on her own, she replied no and he closed the door. He asked had I said the practice manager had signed the prescription while banging on the table. He asked was she saying it was not his signature. He was very angry. He asked had she “*f*****g proof*”. She replied that she knew his signature. He said it was not a forgery. She told the Tribunal that she had nothing to gain from making up this story. He said the practice manager was employed 8 years she was only employed 2 and he had no alternative but to sack her.

She said the respondent never gave her and the practice manager to thrash the matter out. She was shocked and told him he could not sack her. He told her he could do anything he wanted, as it was his practice. She was crying. She told him it had been a pleasure working for him and left. She did not think she had been given a fair hearing and that the practice manager took advantage of her position. She said she had done nothing wrong and felt the respondent had a right to know what was going on in his surgery. A replacement was hired within 3 days. The claimant gave evidence of loss.

On cross-examination she was questioned on her losses. She said she felt they could have all sat down and discussed the issues. She again stated that the issue of paid maternity leave and a pay rise were suggested by the practice manager and not her. She stated the issue of her job sharing was raised with the practice manager and the respondent.

Determination:

The Tribunal have carefully considered the considerable amount of sworn evidence adduced, submissions given and documentation submitted. In all of the circumstances the Tribunal finds that the claimant dismissal was unfair. There is a significant conflict of evidence between the parties and the Tribunal favours the evidence of the Claimant. Furthermore, no proper procedures were followed and she was not given any opportunity to appeal the decision of dismissal. Accordingly, the Tribunal awards the sum of € 12, 301 under the Unfair Dismissals Acts, 1977 to 2007. The claim under the Minimum Notice and Terms of Employments Acts, 1973 to 2005 were conceded by the respondent.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)