

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD 43/2009

Against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan

Members: Mr J. Hennessy

Ms S. Kelly

heard this claim at Wexford on 16th September 2010

Representation:

Claimant:

J.C. Hoban & Co., Solicitors, Suite 114,
The Capel Building, Marys Abbey, Dublin 7

Respondent:

Ms. Helen Barry, IBEC, Confederation House,
Waterford Business Park, Cork Road, Waterford

The determination of the Tribunal was as follows:-

Respondent's case

The respondent held that the claimant had lied to him in respect of her whereabouts during a period of certified absence from work. According to the respondent this was a breach of trust and constituted gross misconduct and it was for this reason that the claimant was dismissed.

The claimant had originally booked annual leave from 27th July to 8th August 2008 but subsequently changed this to 21st July to 1st Aug 2008. She was due to return to work on 2nd Aug 2008 but a medical certificate was delivered to the respondent on that day. This certified the claimant as unfit to attend work for a week.

During that week the witness for the respondent wanted to know when the claimant would be able to return to work and rang her in order to find out. However on ringing the claimant's mobile phone

the witness got a “foreign ring tone” but no answer. The witness then decided to write a letter to the claimant requesting her to contact him as soon as possible and had this letter hand delivered to the claimant’s address. The person who delivered this letter also gave evidence and stated that a man answered the door and told her that the claimant was on holidays in Spain.

When the claimant returned to work on 11th August 2008 she was summoned to a meeting with the manager. The claimant was accompanied by a work colleague and also present was her team leader. A copy of the disciplinary procedure was handed to the claimant during this meeting and it was put to her that she had left the country and not returned from holidays. However the claimant denied this and stated that she had been in Poland for the duration of her annual leave and showed the manager a record of flight details. The claimant went on to tell the manager that she was in Cork while on sick leave. The manager asked about the foreign ring tone when he rang her and why the man at her address said she was in Spain. The claimant denied, at that time, that she had been in Spain. The manager decided to suspend the claimant pending an investigation and sent her home.

However later on that same day the claimant returned to the premises and informed the manager that she had in fact been in Spain and not Cork during the period of sick leave. A disciplinary meeting then took place on 12th August 2008 during which it was decided that there had been a breach of trust and that this was gross misconduct on the part of the claimant and therefore the claimant was dismissed. The claimant was present at this meeting and was informed of her right to appeal this decision. However no such appeal was lodged.

Claimant’s case

The claimant stated that the reason for changing her annual leave plans was that a flight she had booked to Poland was cancelled and she then had to fly a week earlier. Her Mother was seriously ill in Poland and that was the reason for flying home. While the claimant was in Poland she herself became ill and went to a doctor on 1st August. The doctor gave her a medical certificate stating that she was unfit to work from 5th to 8th August 2008. The cert was from 5th August 2008 because that was the date the claimant was due back from annual leave. The claimant told the doctor what environment she worked in and the doctor was of the opinion that although she was unfit to work there for the specified time she was not unfit to travel.

On the 5th August 2008 the claimant’s boyfriend delivered the medical certificate to the respondent and asked the team leader if the claimant was required to attend in person. He was told that it was not necessary for the claimant to attend. Later that day the claimant and her boyfriend decided to book a holiday as they felt that a holiday would do her good and she was not restricted from travelling. They booked a holiday to Spain and flew out from Cork the following day. While she was in Spain the claimant received one missed call from an “unknown number” and did not realise it was the manager looking for her.

On returning home from Spain the claimant received the letter from the manager that had been hand delivered while she was away. The claimant reported to work the following day at 8am and was called to the manager’s office. On being asked where she had been the claimant said that she was in Cork and when asked about the European ring tone and what the man at her address said she replied that she could not explain these. The claimant told the Tribunal that the reason she did this was that she was afraid of being fired if she told the truth. However after she was sent home she decided to go back to the manager and tell the truth. Therefore she went back to the office later that same day and requested to talk to the manager. The manager was not available to speak to her at that time and she instead told the truth to her team manager who then relayed this to the manager.

The following day the claimant was summoned to a meeting and she told the truth directly to the manager. After a recess of about 30 minutes the manager reconvened the meeting and informed the claimant that she was dismissed. The claimant told the Tribunal that she felt there was no point in appealing this as the manager's mind was made up and would not be changed.

Determination

The Tribunal, having carefully considered the evidence adduced at the hearing, finds that, whereas the actions of the claimant would entitle the respondent to dismiss the claimant, her actions were not such as would entitle the respondent to effect a dismissal as summarily as the dismissal was effected. Therefore the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds.

The Tribunal awards the claimant the sum of €7,722.00. In assessing the award the Tribunal takes into account that the claimant's own actions contributed to her dismissal and her failure to exercise the appellate procedure.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

