

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE
- *claimant*

CASE NO.
UD2294/2009
MN2124/2009

against
EMPLOYER - *respondent*

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: Mrs. M. Quinlan

Members: Mr. T. O'Sullivan
Mr P. Trehy

heard this claim at Dublin on 24th January 2011

Representation:

Claimant(s) : Mr. David Leonard BL instructed by Sinnott & Company, Solicitors, Belgrave House, 15 Belgrave Road, Rathmines, Dublin 6

Respondent(s) : Mr. Gerard Connolly, Matheson Ormsby Prentice, Solicitors, 70 Sir John Rogerson's Quay, Dublin 2

Respondent's Case

(MC) Jnr, director of the respondent company gave evidence that the company is a fire protection company. It supplies and installs fire protection products to the construction industry. The company charges specific rates for products supplied to customers and these rates change on an ongoing basis. On 15 May 2009 he had a discussion with an office employee, hereafter known as (M) about the recording of such rates and ensuring that the correct rates were being applied. This was an ordinary discussion, not a heated discussion and the claimant was present during the discussion. On 18 May 2009 he had a further discussion with (M) and the claimant concerning the data entry on the office computer system of the rates applied for products. It was essential that the rates be entered correctly on the computer system. He told the Tribunal that this discussion became heated when the claimant replied that she was sick of having to change the rates the whole time. He

attempted to explain the position to the claimant but she became aggressive and started shouting at him and abusing him. He asked her to leave the office and calm down.

Under cross examination he denied that he called the claimant stupid during the course of the conversation on 18 May 2009. He denied that that he told her not to come back to work. He told her to leave the office until she had calmed down. He denied that he wanted the claimant to charge customers for materials which had not been supplied. He accepted that the company did not have an anti bullying policy in place at the time the claimant was employed. He also confirmed that the claimant was not supplied with a written contract of employment.

(MC) Snr gave evidence that he was appointed to carry out an investigation into the incident on 18 May 2009. He wrote to the claimant on 19 May 2009 enclosing (MC) Jnr's account of the events of 18 May 2009. He asked for a formal response from the claimant by 22 May 2009. The claimant replied to his letter and raised other matters including allegations of bullying. During the course of his investigation other matters came to his attention concerning the claimant's work performance. It transpired that the claimant had failed to use the company's Sybiz accounts system in accordance with instructions. She had also refused to provide information to employee (M) relating to office insurance. She refused to provide bank codes to (M) when requested to do so. These bank codes were necessary in order for the company to pay employees wages.

A disciplinary meeting took place on 29 June 2009 which the claimant attended. (MC) Snr gave evidence that the claimant admitted that it was inappropriate for her to have shouted at (MC) Jnr. She told him that she did not provide the information to employee (M) because she was not getting paid. She told him that she had not had the time to implement the Sybiz accounts package but that her work was completely up to date and recorded on spreadsheets. Following this meeting he considered the matters carefully and came to the decision to dismiss the claimant. He did so as collectively he considered her actions amounted to gross misconduct. He informed the claimant of his decision by way of letter dated 2 July 2009 and he gave the claimant the opportunity to appeal his decision. The claimant appealed his decision by way of letter dated 29 July 2009. He found that the claimant did not raise any legitimate grounds of appeal and upheld his decision to dismiss the claimant.

Under cross examination he accepted that the claimant was a good worker despite the fact that she had failed to implement the Sybiz accounts package. He accepted that the claimant had not been provided in writing with her duties in relation to the Sybiz package. He confirmed that the company did not have a disciplinary procedure in place at the time the claimant was employed. He confirmed that he made the decision to dismiss the claimant and he also heard the claimant's appeal. At the time he did not think to use an independent person to investigate the matters. He denied that the company overcharged customers. The company had approximately 30 employees at the time the claimant was employed. The company currently has approximately 15 employees.

Claimant's Case

The claimant gave evidence that she reported for work on 15 May 2009 and discovered employee (M) crying at her desk. When she enquired as to what was wrong (M) told her that (MC) Jnr wanted her to record materials as having been supplied to customers which had not in fact been the correct materials supplied. This would have resulted in customers being overcharged. On 18 May 2009 the claimant reported for work and had a discussion with (MC) Jnr about inputting and adjusting rates for products that the company charged to customers. When she asked (MC) Jnr a question in relation to the rates he got annoyed and started shouting at her. He called her stupid.

When she replied to him in the same manner as she was being spoken to he told her to leave the office. She understood this to mean to leave and not come back. She was told to go which she did and she did not return to work.

She gave further evidence that (MC) Jnr shouted at work on a regular basis. She never knew if he was going to be in a good mood or a bad mood but he was in a bad mood on 18 May 2009. She told the Tribunal that she had done as much work with the Sybiz accounts package as she could as it was not working properly. It did not even produce invoices. She was never told that she was not working fast enough on the Sybiz system. She was contacted by employee (M) some days after 18 May 2009 seeking insurance and payroll details. She provided the information sought but was never asked to provide bank codes. She has made numerous attempts to secure alternative employment since her dismissal but has been unsuccessful to date.

Under cross examination she stated that she was subjected to constant abuse throughout her employment. She confirmed that she worked for the respondent from 1 June 2006 until August 2007. She then left for two months but returned to work for the respondent as she was offered a higher rate of pay. She continued working until 18 May 2009. She did not complain to (MC) Snr about (MC) Jnr's behaviour as they were father and son. She understood that she was fired on 18 May 2009. She agreed that she felt the incident on 18 May 2009 was not a serious issue because it happened on a constant basis. She was of the view that she was treated like a slave.

Determination

The Tribunal carefully considered the evidence adduced. The Tribunal is not satisfied that the respondent followed correct procedures in arriving at its decision to dismiss the claimant. In particular the Tribunal notes that the decision to dismiss the claimant was made by the same person who conducted the appeal into her dismissal. It is the view of the Tribunal that this procedure was unsatisfactory. The Tribunal further notes the absence of a contract of employment in respect of the claimant and also the absence of an anti bullying policy during the tenure of the claimant's employment. The Tribunal is conscious of the fact that the claimant contributed to her dismissal but taking all factors into consideration finds that she was unfairly dismissed. The Tribunal awards the claimant compensation in the sum of €27,000.00 under the Unfair Dismissals Acts 1977 to 2007.

Furthermore the Tribunal finds that the claimant did not receive her requisite entitlement under the Minimum Notice and Terms of Employment Acts 1973 to 2005 and awards the claimant the sum of €774.03 being the equivalent of one weeks' pay under the said Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

