

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD1972/2009  
MN1857/2009

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 C. Corcoran B.L.  
Members: Mr. M. Flood  
Mr A. Butler

heard this claim at Dublin on 24th November 2010

Representation:

\_\_\_\_\_

Claimant:

Mr. Gary Irwin, Solicitor, Suite 1, Portmarnock Town Centre, Portmarnock, Co Dublin

Respondent:

Michael J. Kennedy & Co., Solicitors, The Parochial House,  
Parochial Avenue, Baldoyle, Dublin 13

The determination of the Tribunal was as follows:-

#### **Respondent's case**

The respondent stated that the claimant was absent from work 32 times during 2008. The respondent had been keeping a record of these absences and was concerned about the extent of these absences. This trend continued into 2009 and a verbal warning was given to the claimant on 24<sup>th</sup> January 2009. However the claimant was again absent without authorisation on 28<sup>th</sup> February 2009. Consequently a written warning issued to the claimant on 2<sup>nd</sup> March 2009. The claimant was again absent without authorisation on 14<sup>th</sup> March and a second written warning was issued to her on 15<sup>th</sup> March 2009. On the 10<sup>th</sup> April 2009 the claimant was again absent from work and the respondent issued her with written notification of dismissal. The respondent stated that wages for one week was paid to the claimant in lieu of notice.

### **Claimant's case**

The claimant stated that up to the time she received the verbal warning on 24<sup>th</sup> January 2009 there had been no issue in relation to her absences from work. The claimant did not confirm or deny the extent of her absence from work.

On receiving a written warning the claimant enquired as to why this was happening and was told by one of the owners "don't shoot the messenger, you are too valuable to loose" and then gave her a hug. However the respondent denied that this had happened.

In relation to her absence on 10<sup>th</sup> April 2009 the claimed said that she had contacted a colleague to ask her to swap shifts and that this colleague agreed to swap. She also stated that she sent a text message to the respondent but got no reply and therefore contended that this absence was neither approved nor disapproved.

The claimant stated that she was not afforded an opportunity to have a representative and not given the right to appeal her dismissal.

### **Determination**

Having considered the evidence adduced the Tribunal is satisfied that fair procedures were followed in dismissing the claimant. The Tribunal finds that the claimant was not unfairly dismissed and the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Furthermore the Tribunal are satisfied that notice of only one week was given to the claimant and that she should have received three. Therefore the Tribunal awards the claimant €510.00 under the Minimum Notice And Terms Of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

