

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE -*Claimant*

CASE NO.
UD1759/2009
MN1688/2009

Against

EMPLOYER -*Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Browne
Mr F. Dorgan

heard this claim at Wexford on 30th November 2010 and 25th January 2011

Representation:

Claimant : Mr. Padge Reck, Sunrise, Mulgannon, Wexford

Respondent : M.J. O'Connor & Co., Solicitors, 2 Georges Street, Wexford

The determination of the Tribunal was as follows:

The respondent operates a service station since taking over the business in March 2007. The previous owner employed the claimant in April 2005. The claimant continued uninterrupted in her employment until her dismissal by the respondent in July 2009. There was a dispute between the parties regarding the exact date of termination.

Respondent's Case:

Mr. K gave evidence to the Tribunal that the claimant held a supervisory role. Mr. K became manager of the service station from March 2008 and he was responsible for the growth of the business. During his first month as manager the witness met with all of the staff and outlined procedures to them. A staff manual was available to all staff.

Mr. K outlined a number incidents relating to the claimant's performance from the time of August 2008, including the following:-

In August 2008 the claimant was spoken to about taking inappropriate cigarette breaks and giving another employee a break at the same time.

During September 2008 the claimant received a verbal warning for non-compliance with company procedures in relation to the non-reporting of an incident with the respondent's computer system.

A confirmation of warning document (dated 19 January 2009) was opened to the Tribunal. It confirmed that the claimant had received a written warning for misconduct arising from an incident that occurred between her and a colleague. The document further stated that it was noted from meeting with the claimant that she intended to improve her behaviour and work ethic. The memo advised the claimant that further warnings in the matter could result in her position being reviewed.

In February 2009 there was an issue with the claimant's time management and she was spoken to about managing her hours. In March 2009 the claimant made an error on the amount of discount she allowed on a product.

On 23 February 2009 the claimant refused to carry out the instructions given to her. On 20 May 2009 the witness conducted a staff appraisal with the claimant and told her that he hoped to see an improvement in her work. On 3 June 2009 the claimant had used her mobile phone while at work.

On 11 July 2009 a customer informed Mr. K in the shop that the claimant had told him that the witness had an issue with his father. Mr. K reviewed the CCTV footage and observed that it was the claimant who had served this customer.

On 13 July 2009 he telephoned the claimant and asked her to attend at the shop premises for a meeting. The stock supervisor was also present at this meeting and the issues were discussed with the claimant. Mr. K informed the claimant that she was dismissed and that he would pay her two weeks holidays.

During cross-examination he confirmed that he had provided the claimant with a reference. He did this because on a personal level he liked the claimant. However, he could not allow her to continue in her position breaking rules and procedures.

A document dated 17 July 2009 was opened to the Tribunal. It confirmed the claimant's employment was being terminated due to a failure on her part not to follow shop procedures as well as her continuous misconduct in the shop about which she had been warned on previous occasions.

The manager of the deli section told the Tribunal that she was subjected to a warning from the respondent following an encounter with the claimant in January 2009. This witness alleged that the claimant had bullied her at that time and on other occasions.

A former assistant manager said she was present as an observer at a meeting between the claimant and the respondent in July 2009. The witness had no recollection of what the issues were at that meeting but knew it was of a disciplinary nature. While she had no input into the decision made by the respondent to dismiss the claimant it was apparent to her that such a decision had been made prior to that meeting.

Claimant's Case:

The claimant furnished a detailed statement to the Tribunal outlining her case. Both the Tribunal and the respondent accepted that statement as evidence in this case. Evidence of loss was also given.

Determination

Having considered the evidence and submissions in this case the Tribunal finds that the claimant was unfairly dismissed. While there may have been grounds for disciplining the claimant the respondent did not satisfy the Tribunal that it discharged its burden of proof to show that the dismissal of the claimant in the circumstances was not unfair and that fair procedures had been followed.

The Tribunal awards the claimant €8,000.00 as compensation under the Unfair Dismissals Acts, 1977 to 2007.

The appeal under the Minimum notice and Terms of Employment Acts, 1973 to 2005 also succeeds and the claimant is awarded €847.54 as compensation for two weeks' notice

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)