

## EMPLOYMENT APPEALS TRIBUNAL

### CLAIM OF:

EMPLOYEE - claimant

### CASE NO.

UD372/10  
MN344/10

### 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: Ms O. Madden B.L.

Members: Mr J. Horan  
Ms. N. Greene

heard this claim at Naas on 27th April 2011

### Representation:

Claimant: In person

Respondent: In person

The determination of the Tribunal was as follows:-

### Respondent's Case:

The respondent has approximately 63 shops nationwide and the claimant worked as a cashier in one of the shops. The Area Manager (RJH) told the Tribunal that his mother had telephoned him to let him know that the claimant had phoned in sick on 2<sup>nd</sup> September 2009 and that as a result of this she felt that the claimant had let the company down. This was deemed to be gross misconduct. It had put the shop under serious pressure and they could not continue to employ her. On occasions staff had been facilitated whenever possible.

A few days later the respondent heard that the claimant had gone to a concert and concluded that she rang in sick for that reason.

There had been no disciplinary issues with the claimant during her tenure. RJH could not say

categorically when the claimant was dismissed. RJH admitted in evidence that he was aware certain procedures should have been followed before making the decision to dismiss the claimant but he accepted that they did not follow any procedures in this instance. Some time after the dismissal took place RJH had tried to contact the claimant by telephone as he had wanted to settle matters but he was unsuccessful in contacting her. RJH had not been privy to any further phone calls from the claimant to his mother.

The claimant's position with the respondent has since been replaced.

### **Claimant's Case:**

The claimant had been employed as a cashier in a shop in Kildare. On 2<sup>nd</sup> September 2009 following her doctor's appointment at approximately 8.35 pm she telephoned her boss Mrs. H. to inform her that she was ill and had a sick cert to cover her for the following two days. Mrs. H. told her she was unreliable and did not believe she had attended the doctor. Mrs. H. told her to find someone to cover for her and not to come back to the shop again.

She pleaded with Mrs. H. and was told it was not Mrs. H.'s problem and that she was trying to run a business. She telephoned M, a colleague who worked in one of the shops owned by the respondent and told her she had been sacked. She asked M to cover for her for the following two days. She then drove to M's house, arriving at about 10.00 pm and gave her the keys and the codes to the shop.

On 3 September the claimant telephoned Mrs. H and said she was sorry for letting her down and then began crying. Mrs. H refused to change her mind about dismissing her. The claimant's sister was with her when the call was made and she asked Mrs. H for the claimant's P45, as the claimant was too upset to continue speaking to Mrs. H.

The next day she was preparing her CV and telephoned RJH. He told her that what Mrs. H. had done was unacceptable and to leave it with him and he would get back to her.

The claimant loved her job and had never let the respondent down in the past and had never telephoned in sick before.

The claimant secured work a short time later but at a significantly lower salary and is now only working part time.

### **Determination:**

The Tribunal carefully considered the evidence adduced at this hearing. As acknowledged by the respondent the procedures as set out in the employee's comprehensive handbook were not complied with at all in this case. In those circumstances, the Tribunal is satisfied that there were no substantial grounds justifying the dismissal.

The Tribunal finds that the claimant was unfairly dismissed and awards her €12,268.00 under the Unfair Dismissals Acts, 1977 to 2007.

The respondent conceded that the claimant was due two weeks notice and accordingly the Tribunal also awards the claimant €820.00 being the equivalent of two weeks notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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