

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD285/2010
RP485/2010
MN263/2010

against

EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. O. Madden BL

Members: Mr. D. Moore
Mr. F. Keoghan

heard these claims in Dublin on 13 May 2011

Representation:

Claimant(s):
Mr. Stephen O'Sullivan BL instructed by
Nooney & Dowdall, Solicitors,
Mary Street, Mullingar, Co. Westmeath

Respondent(s):
No attendance or representation

The determination of the Tribunal was as follows:-

The claim form stated that the claimant was bringing claims under unfair dismissal, redundancy and minimum notice legislation after employment with the respondent from 1 September 2005 to 7 August 2009. Her occupation was given as company secretary. It was alleged that she had been unfairly selected for redundancy.

No written defence was received from the respondent.

At the start of the Tribunal hearing, the Tribunal noting that the claims were uncontested, satisfied itself that the respondent had been served with notice of the hearing.

The claimant's representative then informed the Tribunal that he had sued for minimum notice in the District Court and that he was withdrawing the claims under minimum notice and redundancy legislation but opting to proceed under unfair dismissal legislation.

Claimant's testimony

Giving sworn testimony, the claimant confirmed her start date and described the respondent as a trust company which would be asked by non-Irish client companies to incorporate companies in Ireland. The respondent also worked on tax compliance. The claimant had a company secretarial role.

In July 2009 the claimant's wages had not come through. It was not uncommon for money to be late.

On 7 July 2009 GT (a gentleman with a Latin name) called the claimant to a meeting with SG (another gentleman with a Latin name) on Skype. SG said that he was sorry but he had to let the claimant go. He said that he would pay a month's notice but that the claimant was to leave immediately. There had been no indication of termination (for redundancy or any other reason) before this meeting.

Relevant to seniority the claimant named two female employees (hereafter referred to as JC and EH). JC had been the claimant's assistant in doing secretarial work. The claimant was there longer given that JC had joined in October/November 2008 and EH had joined about the same time as JC. EH's background was as a receptionist in administration. The claimant sat examinations for the Institute of Chartered Secretaries.

Asked at the Tribunal hearing if she had sought a redundancy (RP50) form, the claimant replied that the respondent had not known what it was. She e-mailed SG who replied to GT to prepare it. However, there was no resolution.

The Tribunal was now referred to a 11 July 2009 e-mail from SG to the claimant promising to her, by the next week, her June salary and, at the end of July, her outstanding remuneration including holidays. The e-mail also thanked her for her "precious co-operation in these 4 years" and wished her "all the best for the future". The Tribunal was then referred to other documentation relating to the claimant's purported redundancy and what SG referred to in a 12 August 2009 e-mail as his intention, before the end of that month, to "settle the outstanding payment". In the same e-mail he wrote of "have short of money due to client late payment".

After the Tribunal was referred to other e-mails the claimant told the Tribunal that she had sued in the District Court for money owed and was in the process of getting that. She had not got wages. Also, one RP50 was unsigned and a second one was undated.

Asked why she had been chosen for redundancy, the claimant said that there had been an incident relating to the bank account of a client company. A bank had requested that money be redirected.

There was a second similar incident. SG was the only person who could operate online banking for the respondent. One summer Saturday a lady approached the claimant, gave her a letter and drove off. It was from solicitors in New York.

This letter puzzled the claimant. It was addressed to SG at an Italian address but it was “cced” to her. The letter accused SG of fraud. It alleged that the claimant was involved. All of the respondent’s staff acted as directors in a non-executive company secretarial role. These companies were separate from the respondent.

The claimant went to solicitors across from the office. She spoke to PC (a director of the respondent). SG said that she had nothing to worry about.

In clarification for the Tribunal the claimant said that there were five others in the company and that SG’s behaviour changed after she spoke to PC. SG “more or less ignored” her. She “was a bit tense”. She felt that SG was blanking her. She could not think why SG would single her out for redundancy.

After 7 August 2009 (the claimant’s date of termination) the claimant tried to get other work. She had interviews and got work from November 2009 to July 2010 “on slightly less money”. She said that the manner of her dismissal from the respondent had impacted on her ability to do another job. She resigned from her new job but was asked to reconsider. She had one of the highest results from the aptitude test. However, she had panic attacks and anxiety attacks on her way to work. She had never experienced that before her dismissal from the respondent. She thought that panic came from the summer of her dismissal from the respondent.

The claimant took up employment for a month with a recruitment company in September 2010. It was just holiday cover. She had registered with agencies. Her loss to the date of the hearing was submitted to have been just over forty-six thousand euro.

Respondent’s case

No evidence was offered by or on behalf of the respondent.

Determination:

The Tribunal notes that the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, and under the Redundancy Payments Acts, 1967 to 2007, were withdrawn.

On the uncontested evidence of the claimant the Tribunal unanimously finds that the claim under the Unfair Dismissals Acts, 1977 to 2007, succeeds and, in all the circumstances of the case, deems it just and equitable to award the claimant compensation in the amount of €46,000.00

forty-six thousand euro) under the said legislation.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)