

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

CASE NO.
UD870/2009
MN900/2009

-Appellant

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: Mr E. Murray

Members: Mr J. Hennessy
Mr F. Dorgan

heard this claim at Waterford on 11th May 2010

Representation:

Claimant: Ms Liz Dowling Solicitor, M. M. Halley & Son,
Solicitors, 5 Georges Street, Waterford

Respondent: Mr. Cephas Power BL instructed by
Ms Kim Cullen Solicitor Purcell Cullen Kennedy, Solicitors,
Ash House, Cove Roundabout, Dunmore Road, Waterford

The determination of the Tribunal was as follows:

Respondent's case

The claim under the Minimum notice and Terms of Employment Acts, 1973 to 2005, was withdrawn.

The Respondent carries on business as a Crèche in Co. Waterford. The General Manager of the Crèche told the Tribunal that the Claimant seemed to lose interest in her work after being in her employment for a number of months. Issues arose with regard to punctuality and the Claimant's unwillingness to wear the prescribed uniform and to change nappies. The Manager and the Claimant's immediate supervisor spoke to the Claimant several times with regard to these issues. Further issues arose when the Claimant would leave the Crèche before she was relieved by her replacement. This was causing a continuing problem. The Manager had complaints from other staff with regard to this. She was absent on an abnormally frequent basis. Her lack of punctuality created a problem whereby other staff members could not leave until such time as she arrived and were unfairly delayed at the premises. Because of the nature of the business i.e., a childcare facility, punctuality was important at all times.

The Claimant was spoken to constantly about these issues. A meeting was held on the 22nd of September 2008 when she was formally warned that her performance was unsatisfactory and would have to be improved. The Manager prepared a letter for her which she tendered to the Claimant at the meeting but the Claimant did not take the letter.

Subsequently, on the 16th of January 2009 a further meeting was held with the Claimant at which a “final warning” was given to her as to her conduct. Again, a letter was prepared for her and tendered to her but was not taken by her.

The employer acknowledges that she took no further steps to ensure that the Claimant got either of the two letters referred to and did not make any attempt to either post or hand these letters to the Claimant.

On the 28th of January 2009 the witness met with the Claimant who was again fifteen minutes late. She said that she advised her that things had in fact gotten worse and in the interest of the Crèche and the other staff that they had no choice but to terminate her employment.

Claimant’s case.

The Claimant said that she was unexpectedly called to the Manager’s office where she was told that she was being left go. She said that when asked for a reason she was told that it was because of her attitude. She was taken by surprise. She loved her work. She said that she had not been the subject of any disciplinary procedures and she had never received a letter from her employer warning her that her conduct might lead to her dismissal.

Determination

The Tribunal having considered the evidence entirely accepts the evidence of the Manager that the Claimant’s performance was significantly below an acceptable level. The Tribunal however feels that the written communication prepared by the Management were not adequately communicated to the Claimant. There was an onus on the management to take all reasonable steps to alert the Claimant that her continuing employment was at risk and having prepared the warning and the final warning they did not take adequate steps to ensure that these documents were properly received by the Claimant.

Having considered all of the evidence the Tribunal feels that this failure creates an element of unfairness that entitles the Claimant to succeed in her claim.

Having regard however to the contribution made by the Claimant by her persistent poor performance the Tribunal finds that the appropriate remedy is damages and makes an award of €4000.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

