

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE - **claimant**

UD2430/2009

against

MN2248/2009

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 M. McAveety

Members: Mr. B. O'Carroll
Mr N. Dowling

heard these claims at Mullingar on 4 May
and 1 November 2011

Representation:

Claimant:

Ms Elaine Bannerton on the first day, Ms Orla Cummins on the second day,
Orla Cummins Solicitors, 27 Pearse St, Athlone, Co. Westmeath

Respondent:

Karl Carney, Karl M. Carney & Co, Solicitors,
Raheen, Arklow, Co. Wicklow.

The determination of the Tribunal was as follows:

The claimant, who had previously worked as a credit control supervisor and cleaner's supervisor before coming to Ireland, was employed as a cleaner, one of some 25 employees, in the respondent's nursing home from October 2007. The claimant, who required an interpreter for the conduct of this hearing, was provided with a staff handbook and a contract of employment in early 2009. Polish language versions of these documents were not given to the claimant

The employment was uneventful until early 2009 when the respondent's position is that it became

clear that the claimant was not performing her duties in a satisfactory manner. The respondent who was subject to regular environmental health inspections and HIQA inspections from February 2009 spoke to the claimant informally on a number of occasions concerning her work performance. The claimant was shown how to perform her duties and told that her work was not up to the required standard. Her performance would improve for a period of time but would then regress. The claimant never informed the respondent that she did not understand her duties.

The claimant does not accept that any issue was raised as to the performance of her duties until April 2009 when the respondent embarked on a formal disciplinary route and the claimant was issued with a first verbal warning. Confirmation of this verbal warning was issued in writing on 3 April 2009.

The claimant's position is that the respondent never took steps to show her what was wrong with the performance of her duties. The respondent's position is that, despite being shown what was required, the claimant's work performance did not improve and she was issued with a first written warning regarding her unacceptable work performance on 1 May 2009. As her work performance showed no improvement she was issued with a final written warning on 16 May 2009. The respondent's position is that the claimant laughed when she was given this warning. The claimant's position is that this reflected her feeling that her position with the respondent was hopeless.

There being no improvement in her work performance, the claimant was suspended with pay on 20 June 2009 and a disciplinary hearing was scheduled for 25 June 2009. The respondent reviewed the claimant's position and a decision was taken to terminate the claimant's employment on 25 June 2009. This position was conveyed to the claimant by way of letter dated 26 June 2009 and the claimant was paid one week's notice. The effective date of her termination was 2 July 2009 and she was given the right to appeal the decision to dismiss her from her employment. The claimant declined the offer to be accompanied at disciplinary meetings, the respondent arranged for a fellow Polish employee, who was on maternity leave at the time, to act as translator for the appellant at the meetings.

Determination

There is a dispute over many of the central issues in this case and the Tribunal is satisfied that this is caused by communication difficulties between the parties brought about by the claimant's lack of English. While the Tribunal is satisfied that the respondent was justified in making complaints about the claimant's performance of her duties it is not satisfied that the respondent's informal approach to the matter was properly communicated to the claimant. However once the process became formal with the issuing of the verbal warning on 3 April 2009 a Polish colleague of the claimant was used to ensure that the claimant was fully aware of the issues the respondent had with her performance. Following a sequence of warnings the claimant was dismissed at the end of the disciplinary procedure set out in the respondent's handbook. The claimant declined to invoke the option of an appeal under that procedure. The Tribunal is satisfied that the dismissal was not unfair and, accordingly, the claim under the Unfair

Dismissals Acts, 1977 to 2007 must fail. The evidence having shown that the claimant received the requisite pay in lieu of notice the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)