

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD769/2010

WT329/2010

MN721/2010

Against

EMPLOYER

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
ORGANISATION OF WORKING TIME ACT, 1997
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. O'Connor

Members: Mr. W. O'Carroll
Mr. O. Wills

heard this claim at Tralee on 12th September 2011

Representation:

Claimant: Mr. Patrick Sheehan, Sheehan Ryan & Company, Solicitors,
61/62 New Street, Killarney, Co Kerry

Respondent: Terence F. Casey & Co, Solicitors, 99 College Street,
Killarney, Co. Kerry

The determination of the Tribunal was as follows:-

The appeal under the Organisation of Working Time Act, 1997 was withdrawn at the outset of this hearing.

Since dismissal was in dispute in this case the claimant presented her case first.

Claimants Case

The claimant GM stated that she began work for the respondent company in May of 2008 in the packing department. In March of 2009 she was promoted to supervisor. Her hours of work varied between 7am and 10pm. She liked working for the company, it was hard work and her boss Mr B

could be aggressive. She often worked long hours and might have to return to the premises even after she had went home for the evening.

GM always felt under pressure and whatever she done was never enough.

An incident occurred at the Christmas party on the morning of 20th December 2009. It was a night out for staff, suppliers and anybody involved with the business. GM was there with her husband and friends. She approached Mr B about a day off during the Christmas period. She had booked flight tickets for to return to her native country for the New Year.

He became angry and aggressive, and pushed her husband to the corner. He told her to f... off, and that she was fired.

She and her husband took a taxi home. The claimant did not return to work as she felt frightened.

A friend collected her P45 from the company and she heard nothing more from anybody.

Since the termination of her employment with the respondent she found a job where she works a 39 hour week and would not work for the respondent again.

Under cross examination the claimant confirmed that she gotten a promotion and was getting on well in the company. Staff had been notified in October 2009 that the company was moving premises and that all holidays were cancelled over the Christmas/New Year period.

She said she was not respected and could not work for somebody who treated her the way Mr B had done on the night in question.

The claimant's husband gave evidence and confirmed that an incident occurred on the morning of 20th December 2009. He became involved in an argument with Mr B when he heard his wife being told to f... off. The respondent jumped at him and told him "that was his problem". He was brought outside but didn't know by whom.

Respondent's Case

Mr B managing director of the company stated that the claimant was a superb employee and a friend.

He wrote to all staff on 30th October 2009 advising all employees not to take annual leave over the Christmas period as the company was moving premises. Everybody was aware of the move and excited by it. The process would take ten days and everybody was required to work. GM approached him in mid-December to take time off to travel home over the Christmas period.

He told her no, "not a hope, if he gave time to her he would have to do it for everybody".

On the night of the Christmas party he went to the bathroom. He was accosted at the top of the stairs by the claimant and all of the employees from the packing department.

She informed him that she was not working over the New Year period and "neither were they" (meaning the rest of the department), they were all going home.

The respondent said if they did that to him (return home) they could all f... off. He was infuriated that GM had all the girls riled up and that she had set them up against him.

The claimant wasn't asking him anything, she was telling him.

GM's husband came storming around the corner and raised his hand, security had them both removed.

Mr B got a request for the claimants P45 on December 21st 2009. He didn't issue it immediately and asked for the request to be put in writing. He did not want to lose a good supervisor.

Mr B tried to telephone the claimant on several occasions. Her job was still there and he fired nobody. Why would she claim she was afraid to go to work if she had been fired?

He was embarrassed by his response on the night but felt he had been set up.

Under cross examination Mr B said that he felt the other girls had been misled by the claimant. He offered to refund any money for tickets purchased but nobody came forward. He admitted to being angry at the time of the incident but fired nobody. The company normally closed from the 23rd December to 4th January for the Christmas break. On this occasion the employees were back at work on the 27th December.

On the issue of pay in lieu of notice Mr B stated that he paid the claimant one weeks pay in lieu of notice, he would confirm this from his records and if it hadn't been paid he would make sure it was paid now.

Determination

There was a substantial conflict and dearth of evidence between the parties during the hearing of this case. However, on the balance of probability the Tribunal finds that the remarks made on the night in question by the respondent were construed by the claimant that she was fired.

Therefore the Tribunal finds that there was an unfair dismissal.

The circumstances surrounding the dismissal arose from the fact that the respondent notified all employees on 30th October 2009 in respect to Christmas holidays. The claimant had a request for holidays refused in December. The employer made it clear that this was unacceptable. The claimant again broached the subject on the morning of 20th December knowing that this put the respondent in a difficult position.

For this reason, the Tribunal finds that the claimant contributed to her own dismissal and as a consequence award an amount of €7000 under the Unfair Dismissals Acts, 1977 to 2007.

There was no award made under the Minimum Notice And Terms Of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

