

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE –**claimant**

UD1003/2010
MN981/2010

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: Ms C. Egan BL

Members: Mr P. Pierson
Mr T. Brady

heard these claims at Mullingar on 3 November 2011

Representation:

Claimant:

Mr Seamus McNamee, Information Centre,
Friars Hill Road, Mullingar, Co. Westmeath

Respondent:

Mr Michael O'Sullivan, ARRA HRD,
Castlelost West, Rochfortbridge, Co. Westmeath

The determination of the Tribunal was as follows:

Dismissal being in dispute it fell to the claimant to establish the fact of dismissal

The claimant was employed in the shop at one of the respondent's service stations from June 2007. At the relevant times the claimant worked on a part-time basis. An incident occurred on a day in November 2009 whereby the claimant was taken to task by her supervisor (HS) for refusing to help a colleague (AC) when requested to do so by the colleague. The claimant's position is that this incident occurred on 18 November 2009. The respondent's position, supported by extracts produced from an incident book, was that the incident occurred on 24 November 2009, however under cross-examination HS conceded that she may have been in error regarding the date of the incident.

Regardless of the date of the incident it is common case that on 25 November 2009 the service station manager (SM), who is no longer in the employ of the respondent and was not called to give evidence to the Tribunal, called the claimant to his office. The claimant's position is that at this meeting SM told the claimant of his dissatisfaction with her work and told her to finish now and get her P45 on account of having refused to help AC on the deli counter despite her explanation that she was equally busy serving fuel customers.

It is common case that the claimant left the premises after the meeting with SM. There was no attempt on the part of the respondent to contact the claimant until a P45 was sent on 2 December 2009 after a director of the respondent had spoken to a different colleague (DC) of the claimant and been satisfied that the claimant was not going to return. The respondent's position is that the claimant abandoned her employment on 25 November 2009 after walking out of a disciplinary meeting.

Determination

If the respondent believed that the claimant had walked out of the meeting on 25 November 2009 then the prudent course of action would have been to write to the claimant setting out their position. Rather the respondent did nothing until what appears to have been a chance meeting between the director and DC. The respondent sought to rely on extracts from the incident book dating from January 2009 which purported to involve the claimant. When the Tribunal was able to examine the original document it became clear that this document was not a contemporaneous record of events. The Tribunal is sustained in this view with the concession from the respondent that the final incident which led to the 25 November meeting occurred on 18 November and not 24 November as recorded. In light of the foregoing and in a situation where the evidence of the claimant as to the events of her meeting with SM is uncontroverted the Tribunal is satisfied that a dismissal was effected by SM at the meeting on 24 November 2009. This was a dismissal without any or fair procedure and is therefore automatically unfair. Having regard to the circumstances of the case the Tribunal is satisfied that an award of €15,000-00 under the Unfair Dismissals Acts, 1977 to 2007 is just and equitable.

The Tribunal, being satisfied that the claimant was dismissed without notice, further awards €535-46, being two weeks' pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)