

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.  
UD1015/2010

EMPLOYEE *-claimant*

Against

EMPLOYER *-respondent*

EMPLOYER *-respondent*

Under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. E. Kearney B.L.

Members: Mr. W. O'Carroll  
Mr. T. Brady

heard this claim at Tullamore on 21st September 2011

#### **Representation:**

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Claimant: Mr Frank Jones, SIPTU, Unity Hall, Church Street, Tullamore, Co Offaly

Respondent: Mr. Vincent Turley, Human Resource Consultant, 1 Black Lane,  
Latlurcan, Monaghan

#### **Respondent's Case**

The Respondent owner and his wife gave evidence. The claimant commenced employment in March 2007 as a mushroom picker on the respondent's mushroom farm. She had previous experience in the same area before she commenced employment with the respondent. The start time varied from day to day depending on the mushrooms; the staff were given prior notice when they would be starting. The staff had to manually record their hours worked on a time-sheet in the canteen. The staff were paid a piece rate which varied depending on what type of mushroom and on what day they were picking. If a member of staff did not pick enough mushrooms the respondent made up the balance in wages to equate to the Minimum Wage as per the regulating Agricultural Employment Regulation Order. For the first three years of the claimant's employment she earned above the minimum wage. The claimant had a Contract of Employment and when she requested an additional copy of it, she

was given a blank standard one as the photocopier was broken.

The claimant and respondent's relationship deteriorated. The staff were asked annually to submit their holiday requests in February. All the staff returned their forms except the claimant. On Friday evening at a meeting, the claimant informed the respondent that she was going on holidays for a month; he informed her that she could not go as she had not requested any holidays, but she left for the month anyway. The claimant had not requested the holidays nor had she an agreement with the respondent's wife to take the holidays. The claimant returned at the end of June and started work as normal. The claimant picked '10 chips' of a certain type of mushroom and was supposed to switch to something else but she did not. The respondent repeatedly asked her to switch to the other task but she ignored him. After the third attempt the respondent called the claimant outside and told her that if she was not willing to do the work she could go home; the claimant left the premises.

The claimant returned to work the following day and had a meeting with the respondent's wife where she was asked if there was a problem. The claimant responded by saying she wanted a letter for Social Welfare stating there was no work available for her as she wanted to go and live with her sister. The respondent declined to give her this letter as there was plenty of work available to the point that the respondent was advertising for additional staff.

The relationship declined further and the claimant consistently ignored instruction. The respondent was also informed that the claimant was regularly taking excessive breaks. The respondent left notes for her instructing her to take the correct breaks but she ignored them. The claimant is required to complete her own time sheet for hours worked in the day. As some of the staff were working split shifts, two start and finish times should be recorded. The claimant only recorded her morning start time and evening finish time. It appeared from the time sheets that she was getting paid under the minimum wage as she was not recording the finish and start time in the middle of the day, thus overstating her hours worked. At this stage the claimant had also slowed down her picking rate, this meant the respondent had to make up a large difference to ensure she was paid above the minimum wage. This prompted the respondent to independently record the claimant's hours to see if there was a large difference. The claimant continued to fill in her time sheets incorrectly.

The respondent held a meeting with the claimant on the 24<sup>th</sup> of February 2011. The respondent employed an independent interpreter for the claimant. It was put to the claimant that on an initial investigation of the records it appeared that her production rate had significantly decreased since October 2009. She was also informed that as a result of further investigation into her record of hours worked a number of discrepancies were found. The claimant was given a copy of the record of hours kept by the respondent highlighting the difference between the records she kept and informed that she would have an opportunity to respond and provide an explanation at a further meeting to be held on the 3<sup>rd</sup> of March 2011. The claimant's only response was that *'Mr. might have a different clock to me.'* The day after the meeting on the 24<sup>th</sup> of February the claimant arrived to work with a big clock and placed it in the mushroom shed where she was working.

The next meeting was scheduled for 2.00pm on the following Tuesday the 3<sup>rd</sup> of March. At 1.45pm the claimant got into a taxi and left the premises. The respondent asked the claimant to return and she said no. As a result the claimant was suspended and a meeting was scheduled for the following day the 4<sup>th</sup> of March. The claimant was offered Union representation or the option to bring a colleague with her. The claimant did not attend this meeting and did not answer her

phone. The claimant was not notified in writing that these meetings would be taking place. The claimant was not informed by the respondent that her behaviour or lack of co-operation could lead to her dismissal but was told by the respondent's representative at the meeting on the 24<sup>th</sup> of February.

As the claimant was refusing to co-operate with the respondent they decided that they could not investigate any further and made the decision to dismiss the claimant. The claimant was informed of this the following morning when she returned to the premises. A meeting took place on the 11<sup>th</sup> of March between the respondent and the claimant's union; the claimant was not present. The respondent outlined why the claimant was dismissed. On foot of a request from the claimant's Union the dismissal letter was not issued until after that meeting took place.

A letter confirming the claimant's dismissal was issued on the 15<sup>th</sup> of March 2011; this letter also offered the claimant the right to appeal the decision to dismiss her.

### **Claimant's Case**

The claimant has recorded her own hours of work on a daily basis since she commenced employment with the respondent. The claimant was informed there was a problem with her hours as a result of a request for a contract. The claimant denies requesting a letter for Social Welfare stating there was no work available for her. The claimant had a verbal agreement with the respondent's wife to take the holidays.

At the meeting on the 24<sup>th</sup> of February 2011 the claimant received the respondents version of the claimant's hours worked. The respondent's version of her hours worked disagreed with the claimant's time sheets. The claimant accepted that the hours were different but not that hers were wrong. The claimant was informed there would be a meeting the following week but not the time and date. The claimant was not informed the meeting was serious and could lead to serious disciplinary action. At the prescribed time for the second meeting the claimant had to go shopping as the respondent premises, where she lived, was a few miles outside town. The respondent called her and asked her to return for the meeting but she could not. The claimant attended a hospital appointment at the time of the third meeting; she could not inform the respondent as she did not have the phone number with her. The following day the claimant was dismissed without being given the chance to offer an explanation.

### **Determination**

The Tribunal find the evidence of the respondent's wife particularly credible. The

Tribunal determine that the respondent had a good reason for dismissing the claimant but find the procedures used in affecting the dismissal lacking. By virtue of the fact the claimant refused to engage in the process therefore frustrating the process the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)