

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

claimant

MN2471/2009

UD2645/2009

WT1135/2009

Against

EMPLOYER

EMPLOYER

respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C. Corcoran B.L.

Members: Mr. D. Winston
Mr F. Barry

heard this claim at Dublin on 28th July 2011
and 30th November 2011

Representation:

Claimant(s) Ms. Bonnie Hickey BL instructed by Able, Solicitors, 72 Tyrconnell Road,
Inchicore, Dublin 8

Respondent(s): CEO of the respondent company

The determination of the Tribunal was as follows:-

At the outset of the hearing a preliminary issue arose regarding the correct title of the respondent.

The Tribunal are satisfied that a transfer of undertaking had occurred and that it has jurisdiction to hear the case. Under Section 39 of the Organisation of Working Time Act the respondent's name was amended to reflect the respondent's correct title.

The second named respondent in the case requested that it be removed from the proceedings and this request was acceded to by the Division of the Tribunal.

The claim under the Organisation of Working Time Act, 1997 was withdrawn prior to the hearing.

Respondent's Case

The CEO of the respondent told the Tribunal that he was CEO of another company and he was not personally involved in the day to day business of the respondent. The respondent had a system in place which retained a log of the bookings made by employees. The claimant never denied that she had made a mistake. He attended follow up meetings regarding the claimant but he was not directly involved in any meeting with the claimant. Bookings were made by the claimant on a computer; she was personally involved in transactions. Access was available to all employees including the witness.

Claimant's Case

The claimant told the Tribunal that she joined the respondent on the 10th November 2005. She received a contract of employment in January 2009. She made an error on a group booking in November 2008 in that she forgot to cancel the hotel. This error cost the respondent €900.00. She received a first written warning on the 6th January 2009. She was informed that she had never received a verbal warning previously but she had not received a verbal warning. Her manager spoke to her about this a couple of days later.

If she was allowed to make up for the mistake by the respondent she would charge extra to other clients. If it was a small amount the manager would be aware of it and tell employees to make up the amount lost in another booking. Monthly meetings took place to review performance. She sent an e mail to the HR manager on the 20th January 2009 in which she outlined her dissatisfaction regarding the fact that she had not received a verbal warning. She had no choice but to work five Saturdays to make up for the mistake she made. On the 3rd February 2009 she was called to the board room and she was given a final written warning which she received two days later. She was told that due to her performance she was being issued with a final written warning. She was still taking in sales when she received this and everyone else's performance was down. She was never sent on any training. She was summoned to a meeting on the 26th August 2009 and she was informed that she was dismissed.

She was not given the opportunity to appeal the decision to dismiss. A number of employees had made mistakes and were allowed to make up for their errors. Another employee who was with the respondent for two years was given redundancy.

She endeavoured to obtain employment after her dismissal. She obtained a job in January 2011 at a lower rate of pay than she previously earned.

In cross examination she stated that she signed a contract of employment but she did not receive a copy. When asked that she confirmed that she had read the company handbook she replied it was the first time she had seen it. When she was asked about training she replied that meetings took place and not training. She along with one of her colleagues provided training to new staff in relation to holiday resorts.

Determination

On the evidence adduced the Tribunal finds that there was a lack of evidence by the respondent and it failed to follow procedures. No evidence was furnished by the respondent that the claimant had received terms and conditions of employment and a grievance procedure.

The Tribunal finds that the claimant was unfairly dismissed and awards her compensation of €47,000.00 under the Unfair Dismissals Acts, 1977 to 2007. The claimant is entitled to two weeks' gross pay in lieu of notice in the amount of €1289.44 (€644.72 per week) under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

As the claim under the Organisation of Working Time Act, 1997 was withdrawn and no award is being made under this Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

