

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1469/2010, RP1977/2010
MN1409/2010

against

EMPLOYER
Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O' Carroll-Kelly B L

Members: Mr. L. Tobin
Mr A. Butler

heard this claim at Wicklow on 20th December 2011

Representation:

Claimant : Ms Caroline Murphy B L instructed by
Mr. Pauric Hyland, BJ O' Beirne & Co, Solicitors,
3 Church Buildings, Main Street, Arklow, Co Wicklow

Respondent : Mr. Barry Forrest, Forrest Lennon, 3C Dunshaughlin Business Centre,
Dunshaughlin, Co. Meath and
Mr. Tom Kavanagh, Kavanagh Fennell, Insolvency,
Simmons Court House, Simmons Court Road, Ballsbridge, Dublin 4

The Tribunal is satisfied that the respondent and its listed representatives were properly notified of this hearing. Neither the respondent nor a representative on its behalf appeared for this hearing.

The appeal under the Redundancy Payments Acts, 1967 to 2007 was withdrawn at the outset of this hearing.

The determination of the Tribunal was as follows:

Claimant's Case

The claimant commenced employment as a receptionist with this debit collection company in early 1998. Through her commitment and competence within the company she attained the position of administrative manager in the following years and by the autumn of 2009 she was the supervisor and staff manager of at least employees. Due to a downturn in the financial fortunes of the respondent, the claimant, along with other colleagues was subject to a noticeable cut in their remuneration. That setback was added to in September 2009 where three managers were made redundant. Subsequent to that development the claimant found herself reporting to a new but familiar manager.

From an administrative, productive and indeed personal viewpoint the claimant was dissatisfied with this arrangement. The increasing inefficiency, poor communication and undermining of her position caused considerable stress to the claimant. Among her thoughts was the notion to vacate her position as administrative manager and seek a more junior post as by December she felt belittled by her supervisor and a loss of control of her section. She was certified unfit for work for a week that month and also spoke to the managing director about her concerns and situation.

Following a discussion with a consultant in January 2010 the claimant concluded that to step down from her position would be seen as some sort of failure. Another issue over one her staff and the way the respondent dealt with it reignited her discomfort as an administrative manager. Losing more staff meant she had not the resources to undertake her job professionally and she found that situation most depressing. She told the managing director that her decision was to remove herself from that position in order to take up something else in the company that would be more conducive to less stress and better health. The managing director's response was then to inform her that would entail a pay cut. He also directed her to take four weeks leave and to inform the respondent in writing of her situation. While she did not want that time off she did write on 23 March submitting her resignation as administrative manager and added *I....would like to continue to give all to whatever is decided for me going forward.*

Along with her partner the claimant met the managing director on 22 April and to her dismay he told her that her resignation from the company is accepted. She insisted to him and told the Tribunal that she had not resigned but had sought to step down from her role as administrative manager. In a letter dated 26 April that managing director who obtained advice on the matter stated that the phase step down meant to resign and therefore her employment with the respondent was now terminated. However, that same manager had emailed staff on 25 March writing among other things that the respondent *agreed that she would take some time off...* The claimant commented that he had actually told her to take that time off for health and safety reasons.

Respondent's Case

No evidence adduced

Determination

There is no doubt that the claimant had no intention of resigning her employment with the respondent. However, the loose and ambiguous use of words and their meanings could have contributed to a certain interpretation being adopted by the respondent. The evidence as presented indicated that the respondent itself was unclear as to its own approach to the claimant.

Having considered the uncontested evidence the Tribunal finds that the claimant was unfairly dismissed under the Unfair Dismissals Acts, 1977 to 2005. That dismissal was contained in the letter written to the claimant on 26 April 2010. The dismissal lacked proper procedures and natural

justice was denied to the claimant. The Tribunal awards the claimant €10,000.00 under the above Acts.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 succeeds and the appellant is awarded €4,317.30 as compensation for six weeks outstanding notice.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

