

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.
UD199/2010
MN183/2010

EMPLOYEE *-claimant*

WT98/2010

against

EMPLOYER *-respondent*
under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Hayes BL
Members: Mr J. Goulding
Ms M. Maher

heard this claim at Dublin on 21st March 2011

Representation:

Claimant: Ms Fiona Pekaar BL instructed by Mr. Andrew Freeman Solicitor
Sean Costello & Company, Solicitors, Haliday House, 32 Arran Quay, Dublin 7

Respondent: Mr. Nevan Powell BL instructed by Ms Caroline Fitzgibbon Solicitor,
Fitzgibbon O'Riordan, Solicitors, 49 O'Connell Street, Limerick

Determination:

The respondent is the owner of a number of childcare centres. In the summer of 2009 it was experiencing some cash flow difficulties. This resulted in salaries being paid late in two consecutive months. In addition, a pay-cut of 6% was to be imposed. The combination of these factors caused a degree of disquiet amongst employees. As a result, a number of employees in the respondent's West Dublin branch, the claimant among them, joined a trade union. It appears that the claimant was in the vanguard of this move.

In late September 2009, CM, the branch manager, sought assistance from head office to deal with the disquiet. On 29th September 2009, JM, an executive in charge of operations, came out to the branch. The intention was to allow employees air their grievances with head office. The idea was that employees would be taken in on an individual basis to meet both JM and CM. The claimant, whose employment had commenced on 1st September 2008, was the first employee selected to attend one of these meetings. She indicated that she had been advised by her trade union not to attend such a meeting alone. On being told this, CM telephoned head

office and was told that the respondent did not recognise trades unions and that an employee was not entitled to bring someone along to a meeting that was not a disciplinary meeting. Having been so informed the claimant maintained her refusal. JM thereupon informed her that a refusal would lead to disciplinary proceedings. The claimant told the Tribunal that the possibility of dismissal was not mentioned. The refusal was again maintained and the claimant was summarily dismissed.

It was accepted on the respondent's behalf that the procedures used in the claimant's dismissal were flawed. It is, of course, the case that a refusal to follow a reasonable instruction in the course of employment is an act of insubordination such that it could lead to dismissal. However, any instruction must be reasonable in the circumstances. In this case a tense atmosphere was prevailing and a meeting was proposed with the intention of defusing the tension. Instead, the respondent appears to have stuck on a point of principle and inflamed the situation. The Tribunal is satisfied, in the circumstances of this case, that neither the instruction given nor the decision to dismiss summarily was reasonable.

The claimant advanced the proposition that her dismissal was as a result of her trade union membership although such a ground had not been included in her claim form. In light of the foregoing, the Tribunal does not require to make a finding on this issue.

The claimant was unemployed for six months after her dismissal. Thereafter she obtained part-time employment and subsequently full-time employment. There was no substantial evidence of efforts to seek further employment, and thereby mitigate her loss, furnished to the Tribunal.

The Tribunal is satisfied that the claimant was unfairly dismissed and that compensation is the appropriate remedy. Pursuant to her claim under the Unfair Dismissals Acts, 1977 to 2001 the claimant is awarded compensation of €10,000.00 as being just and equitable in the circumstances. The claims pursuant to the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and the Organisation of Working Time Act, 1997 were withdrawn.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

