

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:

**CASE NO.**

EMPLOYEE – *Claimant*

UD1466/2010

MN1406/2010

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: Mr P. Hurley

Members: Mr T. Gill  
Ms H. Murphy

heard this claim at Galway on the 10th January 2012

**Representation:**

Claimant(s) :

Ms. Sharon Gardner, C P Crowley & Co, Solicitors, Augustine House,  
Merchants Road, Galway

Respondent(s) :

Mr. Brian O'Sullivan, IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

**Preliminary Issue**

A preliminary point was raised on behalf of the respondent regarding the time limit of six months to make an unfair dismissals claim. The Tribunal considered the matter and were satisfied that the application was received by the Employment Appeals Tribunal within the six month time limit.

## **Respondents case**

The Human Resource Manager gave evidence of the respondent company receiving a letter from a client outlining concerns regarding the safety and quality of food at the site where the claimant was employed by the respondent. The client's letter referred to the claimant informing her that she and others had been sick after eating in the canteen run by the respondent company. The respondent carried out a food hygiene and safety audit and no danger or safety issues were found. The claimant was interviewed regarding the allegations of telling a client/customer of the respondent that the food made her feel sick and she admitted saying this to OH. The Tribunal were told of how comments such as this were detrimental to the respondent company as the business is a food and catering business. Such comments put the company at a huge risk and the claimant was suspended while the matter was investigated. Following an investigation and disciplinary meeting the claimant was dismissed. The claimant was given an opportunity to appeal but never sought an appeal.

## **Claimants Case**

The claimant gave evidence of commencing employment in March 2006 with the respondent company. Her role included food preparation and cleaning areas of a canteen. She worked twenty hours per week. She explained how SL arrived at the site on 16 October 2009 and carried out a food safety audit. Following the audit SL asked her if she had told customers that the food in the canteen made her sick. She told the Tribunal she could only eat certain foods and never ate beef or lamb in any circumstance. She could only eat plain food. She received a letter suspending her on full pay dated 21 October 2009 pending an investigation. The claimant told the Tribunal that she had spoken with OH whom she considered a friend while eating her own sandwiches in the canteen one day. On the day she recalled OH was rubbing his tummy and he told her he had eaten the lasagne. She told him the food in the canteen made her feel sick and went through her. At the time she recalls that there was nobody else in the canteen at the time she made the comment which she accepts was an inappropriate comment. She said she never spoke with MC the author of a letter to the respondent regarding concerns about the food quality and safety in the canteen. When asked if she had a problem with the food why didn't she report it to her Manager DN and she said that she had often told him about comments from customers but he never took any action. The claimant said she had often purchased dinners in the canteen for her son and he was never sick. She was very upset to learn of her dismissal on the 18<sup>th</sup> December 2009 and with the Christmas period she hadn't appealed the decision as her solicitor was closed during that period.

## **Determination**

The Unfair Dismissals Acts impose a burden on the respondent to show that dismissal was not unfair.

The Tribunal was hampered throughout the hearing by the absence of key witnesses from the respondent who might have resolved patent credibility issues in relation to how the respondent became aware of the claimant's comments and how such comments would or could be understood.

The onsite manager of the company serviced by the respondent and referred to as 'the client' would appear to have been centrally involved in notifying the respondent company of the alleged defamatory and fictitious comments of the claimant.

It is the task of the Tribunal to determine the case on the basis of a reasonable and rational interpretation of the evidence put forward.

The Tribunal is of the view from evidence heard that the claimant's comments in relation to the food supplied by her employer did not and do not unequivocally amount to defamatory and fictitious remarks such as would justify a finding of gross misconduct and consequential dismissal by the respondent company.

The tribunal is therefore to the view that in effecting the claimant's dismissal fair procedures were not exhausted.

Further, and of equal significance, it is the view of the Tribunal that having regard to the evidence heard, that the sanction imposed on the claimant was disproportionate in relation to the gravity of the allegation against her. The claimant, at worst, made a statement to OH not a member of the respondent's staff but someone she considered a friend. There is no clear evidence that the respondent company suffered resulting permanent or lasting reputational damage.

In these circumstances the Tribunal awards the claimant €20,000 under the Unfair Dismissals Acts, 1977 to 2007.

There was no evidence adduced in relation to the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005: therefore the Tribunal dismisses this claim for want of prosecution.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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