

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
UD1176/2010

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Ryan

Members: Mr P. Pierson
Mr J. Moore

heard this appeal at Mullingar on 8th December 2011

Representation:

Appellant: Mr Anthony Traynor, Dali Solutions, 12 The Grove,
Bettyglen, Raheny, Dublin 5

Respondent: In person

This case came before the Tribunal where the employee was appealing against the Rights Commissioner's Recommendation ref. r-084858-ud-09/EOS.

At the outset KR owner of the company stated that the respondent worked for him in his business which was Contract Cleaning. The business ceased trading in December 2010 and the claimant had never been dismissed.

Appellant's case:

The appellant JW in her sworn evidence stated that at a meeting with her boss KR on 2nd Sept 2009, she was told that they did not want to see her anymore. She asked for her P45 but the request was refused, it appeared there was no problem with her work but the shopping centre where she was based had the problem with her. She was told that the company would find an alternative location for her. She had received no warning that any situation had developed which could lead to her

dismissal. JW did receive an offer of a job in Limerick from KR the owner of the business but this was unacceptable as she lived in Mullingar.

She eventually had no option but to request her P45 again. It was forwarded to her dated 31st December 2010 by a different company who it appeared had taken over the original business.

Under cross examination JW was asked about repeated arguments with her supervisor. She said the person in question was not her supervisor, there was no supervisor in Mullingar. The person in question had been out sick and she had been asked to keep an eye on things. JW stated that he never offered any help to her, would never help with lifting heavy things that had to be moved but she did not remember having constant arguments with him.

Asked if she had made a direct approach to the assistant manager of the shopping centre asking to be made supervisor she said “no”, the reverse had happened, he had called her and she told him she was too busy.

EK a friend of the claimants said that she was in attendance at the meeting of 2nd September. KR said that she was not dismissed and that he would try to find something else for her. He did say there was conflict all the time and that he didn't want conflict between workers. She didn't remember all the details.

Respondent's case:

POT Assistant Manager for the shopping centre in his evidence stated that KR's company had won the cleaning contract for the store. All the staff were good workers. There was a staff supervisor who had responsibility for returns and time-sheets. POT said he became aware of significant conflicts between JW and the supervisor and it was causing significant problems. JW did approach him to request a meeting. She asked why she could not be supervisor, he told her she could not deal with people and informed KR of the situation. He also asked JW to stop interfering with things. The situation had continued on for weeks with the appellant refusing to do jobs and ignoring her supervisor.

POT was then approached by another person and was told an incident that had occurred in the shopping centre. He advised KR that he did not want JW working in the shopping centre anymore.

KR stated that he had no problem with the appellant's work. She had a friend with her at the meeting of 2nd September and was given an opportunity to respond. At the time he thought another large store was to open in the shopping centre but it never happened. He had no option but to ask her to stop working as the store didn't want her there and he needed to keep the contract. The business has since ceased trading and staff received their statutory redundancy entitlements.

Determination:

Having considered the evidence adduced at the hearing the Tribunal finds that the claimant was dismissed as a direct consequence of the dispute between herself and the supervisor. Accordingly the Tribunal determines that the claimant was unfairly dismissed and that the employer did not act as a reasonable employer would have acted in the circumstances. There was a lack of fair procedures. She was not advised that her job was at risk when she attended the meeting on the 2nd September. Instead she found herself dismissed without any adequate warning or being afforded the opportunity to save her job. She was not given any prior notice that the meeting, which she had with the employer, could result in her losing her job. Taking all these matters into consideration the dismissal was clearly unfair.

Having determined that the dismissal was unfair the Tribunal is satisfied that the claimant contributed significantly to her dismissal through her on-going dispute with her supervisor and through her approaching the shopping centre manager which was unjustified and unwarranted.

The Tribunal determines that compensation is the most appropriate remedy, upsets the decision of the Rights Commissioner and awards the claimant €1,500 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

