

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE – *claimant*

CASE NO.
UD2090/2010
MN2035/2010

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 C. Corcoran B.L.

Members: Mr M. Carr
Mr J. Flannery

heard this claim at Trim on 24th May 2012

Representation:

Claimant(s): Ms Deirdre Costello BL, instructed by:
Ms Frances Barron,
Frances E Barron & Co
Solicitors
Killelland House, Ashbourne Court, Ashbourne, Co Meath

Respondent(s): Ms Catherine Day
Peninsula Business Services (Ireland) Limited
Unit 3, Ground Floor, Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:-

Background:

This was a case of constructive dismissal. The respondent company provides security services to third party companies. The claimant worked as a plain clothes store detective in a major department store, which was a client of the respondent company. There were no issues with the employment until the claimant and her partner, a Garda, were arrested in October 2009. The incident was related to a photo of a shoplifter which was taken from the Gardaí computer system and given to the claimant. The claimant brought the photo to work where it was circulated to security staff. The respondent company had no issue with

the claimant's work or that she had been arrested. However the department store, the respondent's client, did not wish to be associated with the incident and instructed the respondent that they no longer wished for the claimant to work there anymore. The claimant was put on suspension with full pay.

There was a meeting on a disputed date in November 2009. The respondent contended that alternative work sites were offered to the claimant. The claimant contended that no specific locations were offered and that she later phoned twice to seek details on the locations but was not responded to. The respondent company contended that after the meeting they sent the claimant a letter, dated November 27th 2009, which offered her alternative work and instructed her to respond within seven days. The claimant contended that she did not receive this letter. The claimant's paid leave ceased December 3rd 2009. The respondent did not attempt to contact the claimant again. After much correspondence between the claimant's solicitor and the company the claimant resigned by letter of August 6th 2010.

Claimant's Case:

The claimant gave evidence that she commenced her employment with the respondent company in March 2009. She worked as a plain clothes store detective in a department store. Her role was to go around the store and apprehend shoplifters. She was paid €10.75 per hour plus a site allowance of €4.00 per hour. There was no issue with her work. After her arrest she attended a meeting with her supervisor and the Operations Manager. While they were sympathetic they suspended her on full pay and said they would contact her further.

The claimant was called to a meeting with her supervisor on, she contended, November 30th 2009. He told her that the client did not want her working at the store anymore, but that the respondent company would offer her work elsewhere. She contended that he offered her €9.00 per hour and that she would no longer receive the €4.00 site allowance as that only applied to the department store role. He could not give her any details on where the alternative work would be. He told her to go home and think about it, which she did. She phoned him later that evening to find out more details on the locations and he said he would let her know, but he never did. A couple of weeks later she phoned twice to speak to the roster manager but he was unavailable and did not return her calls. She did not receive any correspondence from the company.

In February 2010 the claimant attended a court case as a witness to a case involving a shoplifter she had apprehended. She met her supervisor at the courthouse and he told her that as she was no longer an employee she would have to claim her witness expenses from the State. She was shocked. She had not received any correspondence from the respondent indicating that she had been dismissed. Following this the claimant instructed a solicitor to act on her behalf. The claimant later resigned from her position in August 2010.

The claimant stated that since her resignation she worked at a dry cleaners for 12 weeks and then a bakery from April 2011 until February 2012. She resigned from the job in the bakery and had not worked since.

During cross-examination the claimant agreed that her contract of employment contained a grievance procedure. She did not invoke the grievance procedure. She was aware that employees were required to be flexible on location. She stated that she had not received the letter dated November 27th 2009 and that she been informed at the meeting that her pay would

cease on December 3rd 2009. She did not dispute this as she was waiting for her supervisor to contact her with details of the alternative sites.

No reference was made to her conversation with her supervisor, when he told her she was no longer an employee, during correspondence between the claimant's solicitor and the company. The claimant did not dispute that the company asked her to come to a meeting to discuss her return to work in June 2010. She felt she could not return as she believed she might be bullied because of the number of solicitor's letters that had been sent. She felt she had no choice but to resign.

Two copies of the letter of November 27th 2009, printed on the headed paper of two different companies, were submitted to the Tribunal. The claimant denied receiving either copy. She first saw it when it was furnished to her solicitor.

Respondent's Case:

The claimant's supervisor gave evidence that after the arrest the claimant was put on paid suspension in the hope that the situation would blow over, but instead the incident appeared in newspapers and the client no longer wished for her to work there. He contended that they met on November 26th 2009 and that he offered three other sites to her. He contended that he had named one site, but could not recall the other two. She had an issue with the distance to the named site which was on the southside of Dublin. The claimant was to respond within seven days, but she didn't. He disputed offering the claimant €9.00 per hour as €10.75 per hour was the industry rate. The €4.00 per hour site allowance only applied to the department store that the claimant had worked in.

He denied telling the claimant in February 2010 that she was dismissed. There was no contact from the claimant until her solicitor wrote to the company in April 2010. She was a good store detective and he indicated at the hearing that he would be happy for her to return to work. He was working with a different company at the time of the hearing.

During cross-examination the supervisor stated that he could not explain why the letter of November 27th 2009 appeared on the headed paper of two different companies. The company the claimant worked for was merging with another company at the end of 2009 and there was headed paper from both companies in the office. He believed that he had printed one letter for the claimant's file and one for the claimant. He had not contacted the claimant after the November meeting as he was very busy during the Christmas period and the claimant was supposed to reply to him. He did not recall receiving a phone call from the claimant.

A representative of the respondent company gave evidence that the company the claimant worked for merged with another security company to create a new company. The claimant never officially worked for the new company. He had never met the claimant while she worked for the respondent company. Her employment had not been terminated by the company. He did not know why her P45 was dated June 8th 2010. It had been issued at the request of the claimant's solicitor. To his knowledge she had not sought a reference letter.

Determination:

Having examined the evidence the Tribunal finds that the claimant did not discharge the onus of proof required in this case. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007, is dismissed. As this was a case of constructive dismissal the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, is dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)