

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1631/2010, MN1555/2010
WT689/2010

against

EMPLOYER

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. P. Wallace

Members: Mr G. Andrews
Mr F. Dorgan

heard this claim at Limerick on 15th May 2012

Representation:

Claimant: Ms Faye Revington B L instructed by
Kieran Mulcahy, Solicitors, 70 O'Connell Street, Limerick

Respondent: Ms. Judy McNamara, 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:

Respondent's Case

The respondent is a company that provides a wide range of medical services to the public. Those services include a dental practice. A part owner, manager and director outlined to the Tribunal how dental payments are normally transacted between patients and the company. As a result of two customer complaints in January 2010 suggesting deviations from that payment procedure this witness learned that an irregular and potentially fraudulent method of payment was being conducted within that dental practise. The claimant worked in that section as a hygienist and a dental nurse assistant. Other members of that section were another dental assistant and a dentist.

The witness twice interviewed the claimant about these alleged improper payments in early February 2010. He described the claimant's responses as defensive and added she was closed and cagey in her reaction to his questions. However, her demeanour did not imply guilt or wrong doing on her part. During the course of those interviews the claimant acknowledged she knew something not right was happening in relation to payments. At that time she had a close relationship with the dentist and at no stage did she inform the respondent of that. The witness told the claimant he had two statements alleging she covered up those payments. He neither produced those statements to her nor to the Tribunal. It emerged that these statements were verbal accounts only and that no written statements were taken. He placed her on suspension on 8 February 2010.

A disciplinary hearing took place eight days later where again the witness questioned the claimant on allegations she was involved in the irregular payments system. That meeting ended with the witness commenting that it was hard to see where the truth lay in this situation. The witness wrote to the claimant on 26 February under the hearing of Dismissal For Gross Misconduct. The respondent found that the claimant had through her actions breached trust between her and the company. In support of that contention the witness used allegations made by her colleagues that she knowingly received money from the sale of antibiotics in the course of her duties at this practice. That decision was upheld on appeal. The witness added that there appeared to be collusion between the claimant and the others in the section to the detriment of the respondent.

Claimant's Case

The claimant commenced employment with the respondent in October 2008. She shared the dental assistant's role with another colleague whom she felt disliked her. During the interview and disciplinary process she had little to say about the allegations and had no knowledge initially of those allegations. She was disappointed at the dismissal decision as she enjoyed working there. The claimant gained possession of a signed one-line statement from the dentist in question that declared she never made a statement against the claimant. She passed that statement to her representatives but it was not produced at her appeal hearing.

Determination

Based on the adduced evidence it is likely there were some monetary mal practices happening within the dental section of the respondent during the relevant time. The respondent concluded that the claimant's involvement in that practice merited dismissal. That decision was based on two purported statements from her colleagues and the claimant's withholding of information to the respondent. Both of those assertions are open to question as the claimant was not certain anything improper was occurring within the dental section and held back in airing her misgivings until she was certain of them. No direct evidence was given on those verbal statements, one of which was denied, so their value in this case was minimal.

The claimant was at best passive in the interview and disciplinary process and negligent in not producing the dentist's one line statement at the time of the appeal.

Having carefully considered this case the Tribunal finds that the claimant was unfairly dismissed under the Unfair Dismissals Acts, 1977 to 2007 and accordingly Awards her €12,000.00 as compensation under those Acts.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also succeeds and the appellant is awarded €230.00 under those Acts.

The appeal under the Organisation of Working Time Act, 1997 falls for want of prosecution.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

