

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD932/2010

MN882/2010

WT385/2010

RP1246/2010

against

EMPLOYER

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. K. Buckley

Members: Mr D. Hegarty

Ms. P. Doyle

heard this claim at Cork on 4th July 2011 and 5th September 2011 and 6th September 2011

Representation:

Claimant:

Frank Buttimer & Company, Solicitors, 19 Washington Street, Cork

Respondent:

Mr David McCarroll, RDJ Glynn, Solicitors, Aengus House, Long Walk, Galway

Respondent's case

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The claimant made a complaint to the respondent regarding her concerns that a key she had been given to open her own filing cabinet could also open a colleague's cabinet. In making this complaint the appellant said that she had mistakenly opened this colleague's cabinet and had seen items belonging to the respondent stored there. The respondent took this as an allegation of theft against the claimant's colleague and undertook an investigation into the matter. However there were conflicting statements by the claimant and other members of staff. The person investigated in relation to theft was exonerated and consequently the claimant was dismissed for making a false allegation against her colleague. The respondent gave the appellant ample opportunity to participate in the investigation process and to have representation with her at meetings. However the claimant did not respond to these offers and the investigation went ahead without her involvement. The claimant appealed the decision to dismiss her. The Manager of the respondent heard the appeal and upheld the decision to dismiss the claimant.

Claimant's case

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The claimant withdrew her appeals under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, the Organisation of Working Time Act, 1997 and the Redundancy Payments Acts, 1967 to 2007.

The claimant had not made an allegation of theft against her colleague but rather she was merely expressing her concern at her key being able to open her colleague's cabinet. She misplaced her original key and the person who worked for the company, that supplied furniture and fittings to the respondent, had supplied her with another key at very short notice. However the claimant did not know that this key was a master key.

The claimant also held that the investigation was unfair because it had gone ahead without the involvement of her or her Trade Union Official.

Determination

The Tribunal accepted that this was a difficult and complicated case where there were positive and negatives to the arguments put forward by each side. However on balance, the Tribunal is satisfied that the Claimant was not unfairly dismissed. Having considered all of the evidence, the Tribunal felt that the Respondent had little option but to terminate the employment of the Claimant.

The Tribunal felt that the weight of evidence was against the Plaintiff. She went to the wrong locker for the first time in three years. She suggested that she did not know that the key she held was a master key notwithstanding the evidence of the office supplies employee. The Tribunal felt that it was most unlikely that the Claimant could not have been aware that the key was a master key. It was marked "MK". The Tribunal also concluded that the Claimant hardly expected the office supplies employee to be in the immediate vicinity of the hospital with a spare key in his pocket for her locker only.

The Tribunal was of the view that the Claimant compromised her case by not attending a number of meetings that were arranged to discuss the issue. The Tribunal had difficulty in accepting the Claimant's assertion that she had sent an eleventh hour e-mail before a critical meeting, indicating that she would not be in attendance, to the wrong email address, particularly given the fact that earlier e-mails had been sent and arrived without mishap to the correct address.

The Tribunal was unimpressed by the fact that the Catering Manager was not called to give evidence given that, in view of the Tribunal, his contribution was crucial. His original e-mail to HR initiated the entire process. The contents of the e-mail were so much at variance with the evidence of the Claimant that the tribunal found it difficult to accept that the Catering Manager hadn't been asked to amend the contents of the e-mail if it were incorrect and at the very least asked to explain himself before the Tribunal.

The Tribunal didn't accept the Claimant's contention that the complaint that she was making was in relation to her fear that keys could open other lockers, particularly given the content of her letter of the 30th of June 09. The letter was explicit in mentioning the name of a colleague of the Claimants, and the letter could not be interpreted in any way other than, that an insinuation of theft was being made against that employee. The Tribunal was unable to reconcile the Claimant's assertion that the alleged incident occurred on the 19th of June 2009 and that she wasn't in a position to report it immediately, instead waiting until the following Monday before reporting it to her line Manager.

The Tribunal took the view that an accusation of stealing against a fellow employee was a grave offence requiring investigation by the Respondent, particularly given the criticism levelled at the Respondent by the Union Official acting at the behest of the Claimant's Colleagues. If goods specified in the letter of the 30th of June were in the locker of the Claimant's fellow employee and the Claimant showed the same concern for them as she did in her letter of the 30th June, the Tribunal felt that it was beholden on her to make the complaint immediately, either to her line manager or another superior.

The Tribunal was satisfied that a dysfunctional work environment existed. This was clear from the fact that an independent facilitator was required to commission a report and suggest how matters might positively be progressed between three staff members, including the Claimant. Furthermore, it was apparent from the evidence elicited before the Tribunal that the Claimant also had issues with the fellow employee who was the subject of the initial theft complaint.

Overall the Tribunal preferred the evidence of the Respondent and finds that the Claimant was not unfairly dismissed and her claim under the Unfair Dismissals Acts 1977 to 2007 is dismissed.

The appeals under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and under the Organisation of Working Time Act, 1997 were withdrawn by the appellant.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)