

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.  
UD1495/2010  
MN1426/2010

EMPLOYEE            *-claimant*

against

EMPLOYER           *-respondent*

EMPLOYER           *-respondent*

EMPLOYER           *-respondent*

EMPLOYER           *-respondent*

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. O'Leary B L  
Members:    Mr G. Mc Auliffe  
                  Mr J. Maher

heard this claim at Dublin on 14th December 2011 and 1st March 2012

Representation:

Claimant: Anne Fitzgibbon solicitor on 14<sup>th</sup> December 2011  
              Mr. Peter Keatings Solicitor on 01<sup>st</sup> March 2012,  
              Fitzgibbon & Company, Solicitors, The Penthouse,  
              121-122 Capel Street, Dublin 1

Respondents: Ms Caroline Browne, HRP Group, 43 St. Stephens  
                  Green, Dublin 2

## **Background:**

Dismissal is in dispute in this case and the Tribunal heard evidence from the claimant. The claimant was employed as a carer and latterly as an activity co-ordinator. The Respondent is a private nursing home.

## **Claimant's case:**

The Tribunal heard evidence from the claimant who explained that she was employed as a carer and was promoted to activities co-ordinator at the end of December 2009. A letter dated 3<sup>rd</sup> December 2009 was opened to the Tribunal:

“I wish to confirm that (the claimant) has been employed as a care assistant with (the respondent) for the last three years. During the past four months (the claimant) was promoted to activities co-ordinator.”

Problems arose in December when her child was ill. She phoned NK to say that she was not able to go into work on a certain day in circa 22<sup>nd</sup> December 2009. The following day she received a phone call from NK to ask why she was not in work. She told NK that she had phoned the previous day. NK told her that she phoned her four times and NK then started shouting at her, NK then asked her if she was fit for work. NK told her that she was selfish and did not care about the residents. NK asked her if she wanted the job or not. NK had only started working in the respondent in September 2009. NK was the Nursing director. When NK had commenced the claimant had been on four weeks holidays.

The claimant apologised to NK and told her that she could not help that her daughter was ill. She also told her that she would come in to work on Thursday and Saturday to make up for it. NK asked her what she meant as she was rostered Monday to Friday. She told NK that she was not; that she was off on Christmas, (Christmas day was on Friday 25<sup>th</sup> December 2009). The claimant explained that she was not rostered for Christmas Eve or Christmas day and she was rostered to return to work on Monday 28<sup>th</sup>. She also tried to explain to NK that she was covering someone else's shift on Saturday 26<sup>th</sup> but NK just told her that she was rostered Monday to Friday. NK told her that she expected her to be in for Christmas Eve and Christmas day. She did not go in as she had no one to look after her daughter at short notice.

The claimant explained that there had been previous incident where by she sought to speak to NK and NK berated her as she was dispensing medication.

There was another incident at the Christmas party on 3<sup>rd</sup> December in the home. She usually gave out drinks as she knew who was allowed to have a drink but a carer (Ms S) was doing this. This was her job and Ms S was doing this and MS S was doing her job to this day.

The claimant then got a phone call on Sunday 27<sup>th</sup> from EE who was a nurse and is now the Nursing director. EE told her that MK phoned her and asked if she (the claimant) had been into work on Christmas Eve or Christmas day. EE asked the claimant if she would be in work on Monday 28<sup>th</sup> and she told EE that she would not be. This was because of the way NK spoke to her. She had been “in tears” after speaking to NK and NK was a very harsh person.

The claimant phone head office and asked to speak with GD who was the manager. He was not there so she left a message with the receptionist/ secretary to ask to speak with him. She phoned later and the secretary told her that he left a message for her; she was to speak with NK

and he would then liaise with her. She told the secretary that she could not speak with NK as she felt intimidated and asked to speak with him.

The next contact was on 5<sup>th</sup> January 2010 when she got a call from the secretary requesting her work keys for the activities room. She told the secretary that NK had spare keys. She then got a phone call from NK who asked for the keys and NK also referred to her contract of employment. She told NK that she had not received a new contract (for her new position as activity co-ordinator). NK told her that she was no longer an employee and that the keys were the Respondent's property. NK slammed the phone down.

The claimant sent the keys back to the Respondent. She had no more contact excepting sending sick certs.

The Tribunal heard evidence from a witness who explained that the claimant could not have spoken to GP in September of 2009 as NK only commenced in October 2009. As far as they were concerned the claimant had succeeded in taking over the position as co-ordinator. The person who now works as the activities co-ordinator does not work Christmas day and the previous co-ordinator does not work Christmas day. The witness told the Tribunal that NK had severe anger management problems and she herself had complained about NK. Residents and families and other employees complained about NK.

In cross-examination it was put to the witness that the claimant was put in the position as co-ordinator as a temporary trial role.

### **Respondent case:**

The Tribunal heard evidence from the operations manager (aka GD). He explained that the Respondent operates six private nursing homes. They audit the standard of care in the homes and they have a director of nursing.

The position for activities co-ordinator was vacated and he felt that the claimant would be a good candidate for the position. He met with the claimant and SmcM who was the senior nurse.

It was offered to the claimant. He did indicate to her that it was for a trial period only. This was the same as if someone was new in coming into the company that they would be given a trial period.

Around the time of the incident at Christmas he received a phone call from the receptionist that the claimant had phoned. He told the receptionist that they had an on-call system and that he was on leave and she should direct the call to (named person) and he would return after Christmas.

He returned after Christmas and he was told that the claimant was out. He saw the sick certificate and noted that it was because of work related stress. He set up an appointment for the claimant with the work doctor.

The next he knew was that he got a doctor's certificate to say that the claimant's work stress had abated so he invited the claimant into a meeting. He did not get a reply so he wrote a subsequent letter. He did not get a reply. The last contact he had was a phone call from company administrator MD to say that the claimant was looking for her form p45.

He said toher that he understood that the claimant was still an employee. He later got a call from MD tosay that the claimant’s solicitor and the citizen’s information centre were in contact. He saidthat he understood that the claimant was still an employee and if those bodies wished to contactthem they could. They did not contact him.

The Tribunal heard evidence from the company administrator (MD). Her duties included dealing with staff, residents, family members and the staff hours.

In January 2010 the claimant phoned to ask for a letter to say she was on sick leave and not in receipt of pay. She did not post the letter as the claimant had asked her to leave it in work. The claimant’s daughter collected the letter.

A few months late the claimant asked for her form p45. GD told her that the claimant was still an employee and until they got a letter of resignation they could not issue a p45. She phoned the claimant and the claimant explained what the government /official bodies had told her. She told the claimant that if they phoned GD he would be more than happy to talk to her.

In cross-examination she was asked if the claimant was asked to resign before she got her p45. She replied, “Absolutely not as far as we were concerned she was still a staff member, everyone who resigns needs to send a letter. I was in receipt of sick certs from her. As far as we wereconcerned she was still an employee”.

**Determination:**

The Tribunal unanimously determine that the claimant was unfairly dismissed.

It was noted that no evidence was adduced by NK at the hearing therefore the Tribunal must accept the claimants evidence on this matter. The Respondent did not reply to the claimant’s representative’s correspondence.

The Tribunal determine that the most appropriate remedy be compensation and awards the claimant the sum of €10,000.00, (say ten thousand euro) as is just and equitable having regard to all the circumstances under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal determines that the claimant did not receive her notice payment and awards the claimant the sum of €717.00, this being two weeks gross pay as compensation, under the terms of the Minimum Notice and Terms of Employment Acts, 1973 To 2005.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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