

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE – *claimant*

UD1611/2010

against

MN1540/2010

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: Ms. K. T. O'Mahony B.L.

Members: Mr. P. Casey
Mr. O. Wills

heard this claim at Tralee on 19th January and 19th April 2012

Representation:

Claimant(s): Padraig J. O'Connell, Solicitors, Glebe Lane, Killarney,
Co. Kerry

Respondent(s): No appearance by or on behalf of the respondent

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant started working for the respondent in April 2004. She worked as a sales assistant and did lots of other jobs. She was given a sales person's contract but was not given a handbook or disciplinary procedures. The claimant did not miss a days' work in her six years in employment with the respondent. On the 26 April 2010, one hour before closing time, a co-worker told the claimant she was feeling unwell and asked if she could leave to go to her doctor. Her doctor obliged and waited on to see the lady. The following day the manager, who had started working for the respondent six weeks earlier, was annoyed with the claimant for allowing her co-worker to leave early the previous day. The claimant told the manager she was sorry and said it had never been an issue before. The claimant was upset. Sometime later the manager handed the claimant a four-page document received by fax and asked her to sign it. It

was a written warning. It stated that the claimant had neglected to follow company policy and procedures, that the shop was not being run as it should and that there would be review in a month.

The following week the area manager brought the claimant to a local coffee shop. The claimant asked her if she would be getting another warning. The area manager told her, she would be if she did something wrong. The claimant told the area manager she had not been given a handbook. The following Sunday, the owner of the coffee shop gave the claimant a copy of the warning she had been given. The area manager had left it in the coffee shop. Her warning letter was on public display and she cried for weeks. She was very stressed and upset.

The following day, the claimant was off work. The area manager telephoned her from Limerick and asked why she had not phoned her. The claimant was not aware she was to phone her. The claimant felt there was an agenda to get rid of her, just as had happened with the previous manager.

During that week, the manager noticed a speck of dirt on the mirror and made a big deal about it. The owner came to the shop and told her to hold the fort. He, the manager and area manager had a discussion. When he returned, he told the claimant her pay was being cut. The claimant felt it was a set-up to get her to resign because they did not want older staff. She felt stressed and could not work there anymore. The claimant submitted a letter of resignation dated 19 May 2010 to the respondent, indicating that she was resigning as and from 26 May 2020. The owner made contact with her and told her that her job was still there for her. She was the only employee to have her pay cut.

Determination

The Tribunal is satisfied that in the circumstances as outlined in the claimant's uncontested evidence that it was reasonable for her to terminate her contract of employment. Accordingly, her claim under the Unfair Dismissals Acts 1977 to 2007 succeeds. Having heard evidence of the claimant's loss arising from her dismissal the Tribunal awards her the sum of €20,000 in compensation under the Unfair Dismissals Acts, 1977 to 2007. As this was a case of constructive dismissal the claimant has no entitlement under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)