

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD1992/2010
MN1933/2010

against

EMPLOYER

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. Hurley

Members: Mr. G. Andrews
Mr. A. Kelly

heard this case in Limerick on 27 June 2012

Representation:

Claimant(s):

Mr. Philip Moloney BL instructed by
John Battles & Company, Solicitors,
3 New Wellington Terrace, O'Connell Avenue, Limerick

Respondent(s):

Mr. Ciaran O'Keeffe, MJ O'Callaghan & O'Keeffe, Solicitors,
New Market Square, Mitchelstown, Co. Cork

The determination of the Tribunal was as follows:-

It was alleged that the claimant, a casino dealer/croupier, had been dismissed without notice when she became pregnant after an employment with the respondent from 27 August 2009 to 29 April 2010.

The respondent's grounds for disputing the allegation were that the claimant had received several warnings both oral and written from her employer in relation to her conduct at her place of work. The alleged unfairness of the dismissal was fully contested under the circumstances.

In an opening statement at the Tribunal hearing the claimant's representative said that the claimant had been offered employment in Limerick by DB (the respondent's general manager in August 2009). The respondent was to look after tax. She became pregnant about November 2009 and told JW (her shift manager) of this in December 2009. She had not wanted to lose her job.

On 24 February 2010 there was an incident when a security man approached the claimant's gambling table. A man then removed from the table had been cheating from the claimant. A written warning was issued to the claimant "for failure to perform her duties by allowing players to cheat at her table".

The claimant was subsequently told that there was no more work for her because she was pregnant.

Rather than make a longer opening statement the respondent's representative simply stated that the claimant's case would be strongly contested.

Giving sworn testimony, the claimant stated that she was a national of Mauritius born in 1973 who had worked in a casino in Mauritius for a major company before coming in 2007 to Ireland where she studied English and make-up. She had received casino training in Mauritius where there had been no disciplinary issues against her. She did casino work in Ireland before starting in the respondent's Limerick casino where she received no contract. DB (the abovementioned general manager) said that she would get €1,500.00 a month plus tips. She asked about tax and DB said that he would sort it out.

The first few months were fine and the claimant received no warning. She became pregnant around November 2009. She informed JW (her abovementioned shift manager) of this. The claimant told the Tribunal that her boyfriend played in the club. JW told her not to worry and that she would not lose her job.

The claimant had received no warnings prior to 24 February 2010 when she was dealing at a table when GH (a security man) approached the table and put a customer out. JW also came to tell the customer to leave. JW then called the claimant to the office and shouted at her about cheating. She asked JW how the man had been cheating. JW did not invite her to bring a witness. He asked her to sign a written warning but said nothing about anything that could subsequently happen to her as a consequence. The meeting only lasted about five minutes. JW had just screamed at her. She had had no difficulty with him before. She had just asked about her tax. The respondent knew that she needed a payslip to renew her visa.

After the 24 February 2010 warning the claimant received no further warning and she had no other disciplinary issue. That was the only warning she got. Neither did she receive documentation as to the respondent's procedures.

On 29 April 2010 the claimant started work at 6.00 p.m. A cashier told her that JW wanted to speak to her. He said that he could not keep her any longer and to put her feet up at home. She told him that her boyfriend was not working and JW replied that that was not his business. The claimant told the Tribunal that in Mauritius a pregnant woman would be put sitting at a table.

The claimant did not get state benefits or social welfare until February 2012 after which she was getting jobseeker's benefit. She and her partner also received a shared allowance for her child. She had applied for non-casino jobs which would not have involved her leaving her child at night.

Giving sworn testimony, JW said that the claimant was already working for the respondent when he started in December 2009 as a shift manager and met staff to introduce himself. The claimant told him that she was pregnant. Asked if the claimant had been sick at work, he replied that he had only just started but that she had been able to do her work.

DB (then the general manager) had been in the office at the time of the claimant's written warning. They monitored a three-card poker table. A customer was pulling back losing bets such that the respondent would not make money from that customer. The claimant was letting the customer do this. She made no effort to stop him doing it. GH (the abovementioned security man) was asked to approach the customer so that he would cash in his chips and leave.

JW and DB discussed whether the claimant had been in collusion with the customer or just not doing her job. It was decided to give her a written warning for what had occurred. She did not ask for an explanation. JW told the Tribunal that there was very little that she could say after he showed her the CCTV footage but that the respondent only kept footage for twelve weeks after which it was overwritten.

Asked about subsequent events, JW said that he and DB had periodically checked the tables. The respondent's representative asked JW about 27 April 2010 whereupon the claimant's representative objected that this had not been put to the claimant. The Tribunal said that it appeared that it had not been put.

Regarding 29 April 2010, JW told the Tribunal that he and DB had agreed to let the claimant go and that he had informed her that she no longer had a job.

JW told the Tribunal that the respondent had had three other employees fall pregnant and that they had gone on maternity leave. Also, the respondent had a fourth female employee pregnant at the time of the Tribunal hearing and would meet employees if they had issues.

Prior to 24 February 2010 JW did trust the claimant, JW told the Tribunal. He said that he had had nothing to do with payroll at the time material to the claimant but that (now that DB had left and he had become general manager) he believed that staff were paid by bank transfer just as he was. He knew the current situation but not the previous one.

In a closing statement the claimant's representative acknowledged that there had been a conflict

of evidence but submitted that the claimant had been dismissed due to pregnancy. There had been no evidence that the claimant had been paid otherwise than in cash. She had raised the prospect of maternity to the respondent and the Tribunal was asked to take that into consideration.

It was submitted that there had been a lack of procedures. The respondent's T2 defence form had stated that the claimant "had received several warnings both oral and written" but it was submitted that there had only been one warning about which the claimant was not told of a right of appeal or the consequences of further failure and that there had not been fairness.

Regarding the minimum notice claim both sides indicated through their representatives that the claimant was not paid beyond 29 April 2010.

The respondent's representative pointed out to the Tribunal that the claimant had signed her written warning and had not gone back to the respondent to query it. It was not denied that CCTV footage was unavailable but it was argued that cash had not been "in hand" but "a method of payment".

Determination:

Having carefully considered the evidence adduced, the Tribunal finds that the respondent did not employ fair or satisfactory procedures in the dismissal of the claimant. Further, the Tribunal finds that gross misconduct had not been proven or satisfactorily established against the claimant. The Tribunal heard of only one incident where the claimant's connivance at a customer's cheating at the casino was alleged. In response to this incident, there had been one written warning but no other. The claimant had not been given any or any adequate opportunity to respond to the allegation. In the view of the Tribunal no satisfactory nexus has been established between the unproven – and implied – allegations of connivance against her and a finding of gross misconduct. The allegation of gross misconduct based on cheating which must be considered as a critical matter for a casino was not fully or adequately investigated.

It was strongly alleged and not rebutted that payment to the claimant by the respondent had been in cash such that the claimant might have had a concern as to whether or not she would get maternity benefit. It appeared that the respondent saw a problem in the immediate future. Evidence was given that procedures concerning Maternity policy were subsequently put into operation but it was not apparent that such procedures were in place or practised during the term of the claimant's employment with the respondent.

In these circumstances, including the impermanent immigration status of the claimant, the Tribunal finds by unanimity that the claimant's dismissal was wholly or mainly due to her pregnancy and that this was the catalyst for her dismissal. It is to be reiterated that the respondent's procedures were defective and could be said to be crude.

Given that the Tribunal did not find the claimant to have been guilty of gross misconduct, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, succeeds and

the claimant is awarded the sum of €350.00 (one week's gross pay) under the said legislation.

In addition, the Tribunal finds, under the Unfair Dismissals Acts, 1977 to 2007, that the claimant was unfairly dismissed and, in all the circumstances of the case, unanimously deems it just and equitable to award the claimant compensation in the sum of €36,000.00 (thirty-six thousand euro) under the said Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

