

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE *-claimant*

CASE NO.
UD1331/2010
MN1286/2010

against
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 D. Donovan B.L.

Members: Mr J. Browne
Mr J. Flavin

heard this claim at Waterford on 10th February 2012

Representation:

Claimant: Ms. Geraldine Malone, Branch Official, Siptu, Connolly Hall,
Summerhill, Waterford

Respondent: Mr. Eoin M Dee, Solicitor, 48 The Glen, Waterford

As dismissal is not in dispute it is up to the respondent to present their case first.

Respondent's Case

The respondent provides private residential care to children to supplement the States facilities. The claimant was a 'childcare leader' reporting to a Manager. She commenced employment in June 2007. The claimant was promoted through an interview process from social care worker to social care leader.

As a result of the claimant stating she was working on a Sunday when she was not a 'competency meeting' was held on the 26th of April. At this meeting the following allegations were put to the claimant;

- 1)alleged changing of working hours without sanction*
- 2)alleged recording of hours as worked when not present in the centre*
- 3)alleged claiming of payment for same*
- 4)alleged completing and signing of time sheets as correct when they were not an*

accurate record of hours worked.'

At this meeting the claimant explained that she had swapped shifts with a co-worker and that as her line manager was on annual leave she didn't have anyone to sanction the swap. The respondent maintains that as the centre manager was present she should have been asked to sanction the shift swap. The claimant admitted to signing in and signing the time sheets as they were rostered and not for the altered hours.

As a result of the claimant's actions, her failure to give a satisfactory explanation and the fact that she had a 'spent' warning on her record the respondent decided to dismiss the claimant with notice. The 'spent' warning was for leaving the premises to go to mass on a Sunday. The claimant was informed of this and her right to appeal by letter dated the 27th of April 2010. The respondent received no further correspondence from the claimant. The respondent did receive messages from the claimant's representative but as they did not know who she was, they did not respond. There was no loss to the company.

Claimant's Case

The claimant realised she needed Sunday the 18th of April off work, so asked a colleague if she would swap shifts with her. The co-worker agreed to work 10-5pm effectively only swapping 7 hours out of the shift and the claimant worked 7 hours for her colleague on her Sunday shift.

On the 7th of April the claimant asked her line manager if this was ok and was told that it was fine. As the claimant had received a warning for leaving to attend mass on a previous occasion she was careful about ensuring she had sanction to swap the hours during her shift. The claimant's line manager instructed her not to change the rosters as it was a direct swap and would only cause more confusion with the payroll; it was a straight Sunday 7 hour swap. The claimant signed in as normal on Sunday the 18th then left when her colleague came in to takeover. Her colleague did the same for her normal shift.

At the 'competency' meeting on the 26th of April 2010 the claimant did not realise the severity of the situation. The claimant assumed that when she explained the situation to the respondent and the fact that she had permission to swap shifts everything would be ok. The respondent informed her the following day that she was dismissed. The claimant was on certified sick leave for the notice period.

Determination

Having considered the evidence adduced at the hearing the Tribunal finds that the claimant did not engage in conduct such as would entitle a reasonable employer to dismiss her. The Tribunal finds that the claimant did put forward to the respondent a reasonable explanation for her actions. In these circumstances, the Tribunal finds that the respondent was not entitled to conclude that the claimant had offered no mitigating circumstances for her actions and that there was therefore no reasonable explanation for the alleged misconduct. The Tribunal finds that the claimant was unfairly dismissed and accordingly the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds. The Tribunal awards the claimant an amount of €3,000 as compensation.

As the claimant was not available to work during the notice period, the claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)