

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE – *claimant*

CASE NO.
UD338/2011
RP397/2011
MN325/2011

WT101/2011

Against

EMPLOYER – *respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.
Members: Mr. M. Flood
Ms M. Mulcahy

heard this claim at Dublin on 19th June 2012

Representation:

Claimant : In person

Respondent: Hayes, Solicitors, Lavery House, Earlsfort Terrace, Dublin 2

The claimant (SSA) gave evidence of commencing employment with the respondent on the 9 May 2007 as a sales assistant. He turned up for work on the 27 July 2010 and was told by his manager NR to go to head office for a meeting with BO’F. He was late arriving due to the late notice of the meeting and having difficulty locating the office. BO’F refused to meet him face to face as he was late and spoke with him on the telephone. The discussion became heated and he admitted losing it and leaving the building. He attended his GP as he was stressed and unable to work and a medical certificate was obtained and furnished to his employer. He told the Tribunal that when he was fit to return to work he contacted the employer to get his hours and made several other attempts to return but the respondent failed to contact him. He sought assistance from his union however they failed to provide any assistance. He subsequently met with the CIC who contacted the employer on his behalf. Following that communication he received a letter dated the 5 January 2011 stating his employment had ceased.

The claimant said he had a number of grievances throughout his employment which he verbally

communicated to his manager and to the managing director and no action was taken.

Determination

Having considered all the evidence adduced it appears that the claimant was not unfairly dismissed. During his employment he did not invoke the grievance procedures or engage in any meaningful way with his employer. Just as an employer for reasons of fairness and natural justice must go through disciplinary procedures before dismissing so too an employee should invoke the employers grievance procedure in an effort to resolve his grievance. The preponderance of the evidence points to inflexibility on the part of the employee. The employee failed to adhere to procedures when it came to taking annual leave, notifying the employer in the event of absence and the requirement to send in sick certificates on a weekly basis.

The claimant maintained he was unsure as to whether his claim came under the Redundancy Payments Acts, 1967 to 2007 or the Unfair Dismissals Acts 1977 to 2007. The evidence was that the employer has employed another sales assistant to fill the claimant's role and there was no redundancy. The Tribunal accepts this evidence.

The appeals therefore under the Unfair Dismissals Acts, 1977 to 2007 and the Redundancy Payments Acts, 1967 to 2007 fail.

The claimant does not meet the requirements for notice and consequently the claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 fails.

The Tribunal makes no order under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)