

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:  
EMPLOYEE

CASE NO.  
UD585/2010  
MN523/2010

*-claimant*

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: Mr R. Maguire, B.L.

Members: Mr. R. Prole  
Mr G. Whyte

heard this claim at Dublin on 7th October 2011

Representation:

Claimant: REP

Respondent: Ms Sheila Treacy, Ibec, Confederation House,  
84-86 Lower Baggot Street, Dublin 2

**Background:**

The claimant in this case is a carer. The Respondent is an institution that cares for people with needs.

The claimant contends that her employment was terminated because she was suffering from stress and anxiety as a result of what she considers an unfounded complaint against her by a work colleague.

The Respondent contends that the claimant was not constructively dismissed or dismissed at all. The Respondent is prepared to avail of the claimant's services subject to receiving a fit to return to work certificate from the claimant's doctor as stated in letter to the claimant of 14<sup>th</sup> January 2010. The Respondent first became aware that the claimant was seeking additional employment following a reference request from the claimant on 5<sup>th</sup> May 2010. There was no indication given by the claimant that she wished to terminate her services with the Respondent. The Respondent has made contact with the claimant to organise a meeting to discuss her possible return to duty.

As dismissal is in dispute in this case the Tribunal first heard evidence from the claimant.

**Claimant's case:**

The claimant explained that she worked 39 hours per week. She worked nights mostly from Monday to Friday and at any time over the weekend. In the lead-up to 14<sup>th</sup> January 2010 she was suffering from stress mainly because there was a complaint against her. She did not know the procedures as to how to deal with this. Then there was a change in her shift patterns. She did ask her employer on a number of occasions about the matter and she was told that they were on an information gathering mission.

On 14<sup>th</sup> January a taxi driver knocked on her door with a letter for her to sign. She phoned her mother in law and they opened the letter. She considered the letter to be one of dismissal as the company seemed to “be withdrawing my services” from (a named entity, known as CH which administered the payroll for the respondent).

“I am writing to you in regard to the letter I received from you 11<sup>th</sup> January, 2010, regarding your recent assignments to (named entity, aka GLP).

I have again reviewed the unit to which you have been assigned and also in light of receiving a letter on 13<sup>th</sup> January, 2010 from your GP, which concerns us. Accordingly we have advised CH that we wish your services to be withdrawn from (the respondent).

However, in the event of your doctor providing a report for you confirming that you are fully fit to discharge the full duties required, you will be considered for work assignments should shifts become available at the time”.

The claimant opened a letter to the Tribunal that was from her doctor to the respondent.

“(The claimant) is a patient of mine. She has been suffering from anxiety and stress related symptoms. She has been under considerable stress in her work for (the respondent) due to a complaint against her which she is trying (sic) to defend at the moment. She has been moved to a new unit and has some problems with her duty roster (as she has a young child) which needs to be discussed with her manager. I feel that a quick resolution of these two issues will alleviate her anxiety.”

The claimant did not feel that the doctor was saying that she was unfit. She wrote to the respondent to say that she would continue with the investigation even if she was dismissed. The claimant opened a letter dated 04<sup>th</sup> February 2010 which she had sent to the respondent. The claimant told the Tribunal that her employment was terminated and that she continued with the investigation. She was fully exonerated by letter dated 28<sup>th</sup> May 2010.

It was put to the claimant that she was of the view that she was dismissed and she was asked if there was any communication (to the contrary). She replied “No not until July when ms X rang me to say that the job was still there”. “I did not think that it was fair that they had given me a dismissal letter and they then offered me the job”. It was a month after she was exonerated that she was offered the job. The claimant told the Tribunal that her trust in the respondent had gone since 14<sup>th</sup> January 2010 because of how she was treated.

**Respondent's case:**

The Tribunal heard evidence from the director of nursing (GM). She explained that on 30<sup>th</sup> November 2009 they received an allegation. They met a person regarding the allegation and they met the claimant. They told the claimant that they had not formed a view regarding the matter. They gave a report about the incident to the claimant and placed the claimant on special leave with pay. The respondent then placed the matter into a preliminary screening process. She asked the claimant to return to work in another location not in the location where the allegation was made. The claimant was satisfied with this.

On 17<sup>th</sup> December 2009 the claimant phoned her to say she was unhappy with her hours. She explained that the hours offered were comparable to the work hours in the other location. Thirty minutes later the claimant's husband phoned to say that the claimant wanted to work split shifts.

The witness was shocked that the letter of 14<sup>th</sup> January be considered a letter of dismissal. It was not her role to dismiss anyone. She was concerned about the claimant's health and was good friends with the claimant. She was waiting for the claimant to furnish her with a certificate to say she was fit to return to work. The claimant was a good employee and a good worker. They would be happy to have the claimant return to work. If the claimant had phoned her she would have invited her in to meet her and ask for a fit to return to work cert.

In July 2010 the claimant was offered her original position of 39 hours the claimant and her husband said that they would think about it. The claimant was guaranteed 39 hours.

The claimant was fully exonerated of the allegation by letter dated 14<sup>th</sup> July 2010.

**Determination:**

The Tribunal unanimously determines that the claimant was not unfairly dismissed. It was entirely explicable for the director of nursing to decide in her professional opinion that the claimant was not fully fit to discharge her duties. The letter from the Respondent to the claimant was not intended to be and did not purport to be a letter of dismissal. None of the claimant's subsequent actions indicated that she was willing to return to work. The company still consider her employed and were happy to return her to work at thirty nine hours and renewed that point at the hearing.

The claim under The Unfair Dismissals Acts, 1977 To 2007, fails.

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)

