

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE – *claimant*

CASE NO.
UD1740/2009

Against

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D Herlihy
Members: Mr W O'Carroll
Mr T Kelly

heard this claim at Limerick on 1st December 2010 and 10th February 2011
and 4th April 2011

Representation:

Claimant: Mr Cathal Minihane
Solicitor
24 Barrington Street, Limerick

Respondent: Mr Peter O'Flynn BL
Courthouse Chambers, Washington Street, Cork

Respondent's Case:

The respondent runs two gardening shops, one in Cork and one in Limerick. When the respondent opened the Limerick shop she asked the claimant, who was a friend of hers, to be manager. She knew he was looking for work at the time. His employment began in May 2007. There was also a fulltime shop assistant. She contended that she supplied a copy of the grievance and disciplinary procedures to claimant with his contract of employment.

The respondent found that the shop in Limerick was not being kept properly. She was unhappy with the performance of the shop assistant and the failure of the claimant to manage him effectively. She kept a record of verbal warnings she gave to the claimant.

Issues with the shop were:

- Reports received that the shop wasn't open on time.
- The shop was dusty
- Items were not priced
- Products left in the stockroom and not put on display

- Inadequate stock control or ordering
- Poor record keeping
- Unopened post found in boxes
- Invoices that should have been sent to Cork, but weren't
- Weekly accounts not being sent to Cork shop
- Both employees taking subs from the till which weren't properly reconciled for PRSI.

The claimant blamed the shop assistant for the shop opening late, but the respondent considered that it was the claimant's role to manage the problem. A job to create a meditation garden took 12 days instead of the 5 days quoted for. The claimant blamed the rain and people not being there. The cheque was sent to the shop in July 2008, but the respondent found it in the shop in September.

The respondent took over the running of the shop in April 2008 to cover leave. She discussed the presentation of the shop and the wages management with the claimant. It wasn't a formal verbal warning; she just told him that the situation had to change.

When she returned on May 3rd 2008 the presentation of the shop had not improved and the claimant and shop assistant were still taking subs. The shelves were not being stocked and a shop assistant who worked Saturdays only told her that she had not been told what to do. She discussed the situation with the claimant the following week and told him to give the full-time shop assistant a verbal warning.

She returned on May 13th 2008 and found that the shop was still a mess. The respondent gave the shop assistant a verbal warning. On her next visit she put the claimant in charge of the wages so that the practice of taking subs would cease, however, it didn't improve so assigned that elsewhere. She issued a verbal warning to the claimant on July 28th 2008 for having not finished painting a plant stand and for not distributing catalogues. She issued a written warning to the shop assistant on August 22nd 2008.

In September the respondent checked the accounts for the shop. The shop was losing money so she decided to make the shop assistant and a Cork employee redundant. She decided to run the shop herself. She covered the shop in September 2008 while the claimant was on holidays. While she was there she found cannabis herb behind the counter and dismissed the shop assistant immediately.

The respondent reorganised the shifts so that the claimant managed the shop on Mondays, Thursdays and Fridays. She was in the shop on different days. In October 2008 she warned the claimant about having changed his holiday plans. She required him to give six weeks' notice of his holidays. She was still not happy with the claimant's performance so she hired a personal assistant (PA) in November 2008 to deal with the claimant, as their relationship was too personal. She instructed her PA to issue the claimant with a warning on December 18th 2008.

The claimant failed to take a stock check in January 2009 and the respondent still had to chase him to get things done. He didn't say that he had any difficulties doing anything. The claimant said he intended to take holidays in February but he didn't know when. She said that she would be in India and there wouldn't be cover for the shop. He was to book his holidays with the PA. The respondent visits India every year to buy stock. Before she went she met her PA. The claimant had not forwarded the accounts from the shop and he had lost the cashbook. She discussed a warning letter with her PA. She gave the claimant a book to keep notes in.

On February 7th the respondent found missing invoices and reminded the claimant of the meeting on February 10th 2009. At the meeting the claimant failed to bring his notebook. He did not mention that he intended to take holidays. The claimant had taken 18.5 unpaid leave days in 2008. The respondent told him that he couldn't do it again. He said his wife had more leave than he did.

When the respondent returned from her trip she phoned the Limerick shop and discovered that the claimant was on holidays. The claimant had left a new part-time shop assistant alone to run the shop after only three days in the job. The respondent issued the letter of dismissal on February 23rd 2009 effective from March 23rd 2009.

During cross-examination the respondent stated that she had a note that she gave the claimant a contract on November 24th 2008. She gave him a copy of the disciplinary and grievance procedures with it. She gave him several verbal warnings and eventually put it in writing. The claimant disregarded everything she said to him. She gave all staff a bonus in 2008.

The Tribunal heard evidence from two other witnesses.

Claimant's case:

The Tribunal heard evidence from the claimant as to his working conditions. He gave evidence as to the various incidents and disciplinary matters.

In cross-examination the claimant said that he was unaware of a probationary period the he was offered the job and he took it. He did not see a contract of employment. He was asked about the employee that was only working there a few days and was then left on his own in the shop. He explained that he trained the employee to his satisfaction in two to three days. He decided when staff were ready to do the work. The claimant denied that he never gave the owner the dates he was going on holidays

The Tribunal heard evidence from the claimant's wife.

Determination:

The Tribunal determines that the claimant was unfairly dismissed. The claimant had contributed to his dismissal. Accordingly the Tribunal awards the claimant the sum of €6,000.00, under the Unfair Dismissals Acts, 1977 To 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)