

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE - **Claimant**

UD1935/2010

RP2612/2010

MN1868/2010

against

EMPLOYER - **Respondent**

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1967 TO 2005

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms E. Kearney BL

Members: Mr T. L. Gill  
Ms H. Murphy

heard these claims at Ennis on 11 December 2012

#### **Representation:**

Claimant:

Ms Kate McInerney, Michael Houlihan & Partners Solicitors,  
9/10/11 Bindon Street, Ennis, Co. Clare

Respondent:

Mr John Barry, Management Support Services (Ireland) Limited,  
The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:

At the outset the claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn.

Dismissal being in dispute it fell to the claimant to prove the fact of dismissal

The claimant was employed as a cleaner from June 2008 in a nursing home in Ennis for which the respondent held the cleaning contract. In the summer of 2010 the claimant was one of fourteen cleaning employees of the respondent to work at the nursing home; the claimant and his supervisor (TS) were by now domestic partners. It was common case that at all times the claimant was regarded as a good employee.

On the night of Friday 11 June 2010 an incident occurred at a local hotel at which the claimant and TS were staying. While the parties had very different positions as to what transpired, it was common case that the Gardai were called and TS taken to hospital. The claimant was unable to return to work until August 2010. No charges were laid by the Gardai as a result of the incident.

TS spoke to her charge hand during the evening of Sunday 13 June 2010 to inform her that she would not be in work the following day. The claimant returned to work on Monday 14 June 2010. It was the respondent's position that the charge hand had been present during the early stages of the incident and knew what had happened. On Wednesday 16 June 2010 TS telephoned the area manager (AM) to complain that the claimant had assaulted her on 11 June. Later that day AM phoned the claimant and told him not to go to work the following day but that he would be paid.

As a result of this AM and the regional manager (RM) arranged to meet both the claimant and TS on Friday 18 June 2010. AM and RM met the claimant first, for about an hour, at his sister's house. When it was put to the claimant that TS had alleged that he had beaten her up the claimant denied having done so. When AM and RM met TS she gave them details of her allegations against the claimant and told them that she would not be able to work with the claimant any more.

The claimant continued on paid suspension and on 24 June 2010 AM and RM wrote to the claimant referring to the meeting of 18 June in the following terms

“We would like to confirm that due to the seriousness of the alleged altercation with TS, we are left with no alternative than to suspend you with pay until further notice pending a full investigation by the company.

RM will contact you within the next week with a view to meeting you and giving you our decision on our intentions going forward.

If you any (sic) queries on the enclosed, please do not hesitate to contact RM on no. given.”

RM and the industrial manager (IM) met the claimant on 2 July 2010 in Ennis and told him that the respondent had decided that they could no longer have the claimant and TS working in the same contract. The claimant was told he would have to move to a different contract and that would be as part of the respondent's industrial team working out of Limerick starting Monday 5 July 2010. The claimant told RM that he was not happy with the decision, he would not be able to get to Limerick and he queried why he had been penalised when he felt he had done nothing. RM told the claimant that if anything came up in Ennis then they would offer that to him. It was agreed that the claimant would contact RM over the weekend to confirm his acceptance or otherwise of the position offered in Limerick.

The same day, 2 July, the human resource business partner (HR) wrote to the claimant in the following terms

“As you are aware TS has made a very serious allegation against you and it is our understanding that there has been a report made to the Gardai who are dealing with the matter.

The company has an obligation under the Health and Safety at Work Act, 2005 to protect our employees. Due to the serious nature of the complaint, we have no option but to transfer you to an alternative location within the Group. It would not be possible to transfer TS.

I have been informed that you were offered a position in Limerick on the industrial team for a rate of €9-50 and with the opportunity of additional hours which you have refused due to the distance. We believe that it is a reasonable offer of employment.

I wish to advise that your final day working at the current site will be Friday the 9<sup>th</sup> of July and your new position will commence on Monday the 12<sup>th</sup> of July. Please contact me on no. given on receipt of this letter to discuss this offer in further detail.”

The following day the claimant phoned RM to indicate that he was not going to accept the offer of work in Limerick. At this point RM told the claimant that he would not be paid after 9 July 2010 on suspension. On 9 July 2010 HR wrote to the claimant to advise that in light of his decision not to accept the position in Limerick he would be laid off from 12 July 2010.

**Determination:**

The respondent was at pains at all times to insist that it never took disciplinary action against the claimant. The Tribunal cannot accept this contention in circumstances where the only time members of management met the claimant to discuss the incident of 11 June 2010 was the meeting of 18 June. Even before that meeting AM had spoken to the claimant and told him not to attend work on 17 June. During her evidence AM told the Tribunal that after meeting the claimant and then TS on 18 June she “had heard enough” to know that the claimant and TS could no longer work together. She “felt the claimant would no longer be comfortable if we put him back there.” TS was off work until August yet immediately the respondent took steps to move the claimant from the nursing home. The Tribunal is satisfied that the action of moving the claimant from the nursing home, notwithstanding the flexibility clause in the claimant’s contract of employment which allows for mobility from site to site, was disciplinary in nature. The letter of 24 June talks of suspension with pay until further notice pending a full investigation by the company. There was no further investigation, the meetings of 18 June were the extent of the investigation. The claimant does not have a driving licence and the Tribunal is satisfied that the position offered to the claimant in Limerick did not represent a reasonable offer of employment. The Tribunal is further satisfied that the respondent failed to carry out a full and fair investigation into the complaint from TS about the events of 11 June and that the decision to put the claimant on lay-off from 12 July 2010 effected the dismissal of the claimant. It must follow that such dismissal was unfair and the Tribunal awards €22,000 under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal is satisfied that both the letter of 2 July from HR and the phone call from RM the claimant received one week’s notice of his dismissal. Accordingly, the Tribunal awards €350-00, being one week’s pay, under the Minimum Notice and Terms of Employment Acts, 1967 to 2005.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)