

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE (*claimant*)

CASE NO.
UD211/2011

MN207/2011

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 J. Sheedy

Members: Mr. P. Casey
Mr J. Flavin

heard this claim at Cork on 5th July 2012 and 18th September 2012

Representation:

Claimant(s) : Ms. Martha Carter, O'Leary Carter & Co, Solicitors, Strand
Street, Kanturk, Co Cork

Respondent(s) : Mr. John Boylan, McNulty Boylan & Partners, Solicitors,
Clarkes Bridge House, Hanover Street, Cork

Respondent's case

The MD of the respondent company stated that the company has 10 branches in operation. She did not work in the same location as the claimant. The claimant was employed as a pharmacy counter assistant. The manager of the branch where the claimant worked came to the MD to report allegations made against the claimant. The MD held a meeting with the branch manager in April/May 2010. The manager brought a number of allegations to the attention of the MD including the following:

- the claimant threw a stapler at her manager
- threw her coat at a pregnant member of staff. The staff member stumbled and was caught by the manager who saved her fall
- she aggressively pushed a chair down on the floor which caused a member of staff to complain

- the claimant was asked not to place an order until after her holidays but she went ahead and placed the order anyway
- the claimant refused to change an incorrectly priced item of stock
- she was using foul language, stamping her feet, grunting, did not want to serve customers and certain customers refused to be served by the claimant.

A meeting was held with the claimant, the branch manager and the MD on 13th July 2010. A document was given to the claimant with the list of complaints made about her. The claimant accepted most of the complaints but no explanation was given by the claimant as to her conduct. There was no option but to dismiss the claimant for gross misconduct.

During cross-examination, the MD stated she prepared the complaints document in the days leading up to the meeting. She did not advise the claimant she was under investigation. The branch manager had spoken to the claimant in relation to the incident involving the stapler. There was no oral or written warning. The branch manager told the claimant the previous day about the meeting. She may not have been told of the serious nature of the investigation. When the claimant asked for a second chance, the MD felt the matter was too serious.

No annual reviews took place in 2008, 2009 and 2010. The MD did not accept that other staff members did not want to use the Epos system. They were prevented from using it by the claimant and felt they could not go near it. The claimant's main role was working at the counter. The only course the claimant attended was the Epos course. The claimant accepted that she used foul language. In relation to the price change, the claimant should have corrected the price label as instructed. The throwing of the stapler was witnessed by B and was admitted by the claimant at the meeting.

The MD did not have the dismissal letter prepared in advance of the meeting. The claimant was replaced by the floating assistant who took more hours in the branch. The MD took huge care and time to investigate the matter between April – July, 2010.

In reply to the Tribunal, the MD stated there was a staffing level of 85-90 staff in the group at the time. There was no written grievance policy in place, the company had a bullying policy. The complaints made were oral complaints. The MD did not instruct the branch manager to tell the claimant what the meeting of 13th July 2010 would be about. She did not think of viewing the CCTV footage at the time.

The branch manager JM gave evidence that she worked for the respondent between 2008 and 2011. She spoke to staff members at the branch over her concerns about the claimant. The final straw was when a stapler was thrown in her direction. She asked the claimant if she had done it on purpose and the claimant said that she had. Other incidents were where the claimant had not re-priced a product after being told to do so, ordering stock after being advised not to do so and the claimants coat colliding with a member of staff who was pregnant, almost knocking her over. JM went to the MD and outlined her concerns.

A meeting was called after work on 13th July. Present was the claimant, the MD and JM. A list of allegations was put to the claimant and the only incident she disputed was the incident with the coat. The MD and JM left the room for 10/15 minutes and returned to the claimant with a decision of dismissal due to gross misconduct. It was not decision they took lightly.

Under cross examination JM said that the claimant spent a lot of time on the Epos system, she

was good at it. JM was not trained on the system and head office dealt directly with the claimant on occasion. JM stated that she did not feel undermined by the claimant's use of Epos and her dealings with head office. She had a conversation with the claimant in May and felt the air had been cleared. JM would have logged incidents but did not keep her records, there were customer complaints but no written records of the complaints were kept. The claimant was told of the meeting on the day and was not advised as to its significance or seriousness. No offer of appeal was given.

Claimant's case

The claimant gave evidence that she worked for the respondent on a full time basis since 2003. She did not have a contract of employment and her roles included counter, ordering and banking. In 2004 she received training on the Epos system which was a software programme for stock control, communication with head office and reporting. Her boss was the day to day manager in the shop but pricing and was done directly from head office. Any issues with the Epos she would be contacted directly.

The claimant felt she had a good working relationship with JM and never had any complaints. She felt she was answerable to a lot of people but did what she was told and got on with the job. A discussion took place with JM in April, lots of things were discussed and while they both had their problems the meeting ended amicably. They both agreed to more communication between them. The claimant had no recollection of any incident with a coat, she would have been mortified if she had caused anybody an injury. She stated that she did toss the stapler in the direction on JM because of incidents that had occurred, boxes would be thrown down if JM was in bad humour.

On 13th July she was advised at approximately 2.30pm that the MD wished to see her that evening. The claimant felt that it may be about reducing her hours or her pay. When the list of allegations was put to her she was overwhelmed by it all, she couldn't believe what she was hearing. The claimant was not advised in advance what the meeting was about, she was given no opportunity to bring a representative with her and when she was told her employment was being terminated she asked for a second chance. To this day she still is unsure as to why she was dismissed. The claimant has been unemployed since her date of dismissal.

Under cross examination the claimant said that she tossed the stapler to the other side of JM. JM never asked if she threw it on purpose and the claimant never replied that she did. She never turned her back on a customer and while she accepted that she used bad language it was never to customers and never aggressively.

Determination

The Tribunal finds that the respondent did not follow any acceptable procedure in dismissing the claimant. She had no contract of employment, there were no grievance procedures in place and she was not given any opportunity to have representation at a meeting that led to her dismissal. The claimant was not made aware of the seriousness of the meeting and she was given no right of appeal.

In conclusion the Tribunal finds that the claimant was unfairly dismissed within the definition

of the Unfair Dismissals Acts but the Tribunal has to take into account the level of contribution that the claimant made to her dismissal. The Tribunal awards the claimant the sum of € 25,000.00 under the Unfair Dismissals Acts 1977 to 2007.

It was agreed by both parties that the claimant received two week's pay in lieu of notice. The Tribunal awards the sum of € 1,5 84.00, this being an additional four weeks gross wages, entitlement under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)