

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD378/2011

WT121/2011

MN372/2011

against

EMPLOYER

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. Wallace  
Members: Mr. G. Andrews  
Ms. S. Kelly

heard this claim at Limerick on 8th November 2012

Representation:

Claimant:

Mr. Declan Duggan, Declan Duggan & Co, Solicitors, Newline, Charleville, Co Cork

Respondent:

Denis A Linehan & Co, Solicitors, Rath Goggin South, Charleville, Co Cork

### **Respondent's case**

The respondent owns and manages a fast food outlet and she employed the claimant as a counter assistant from October 2006 to 1<sup>st</sup> November 2010. The claimant was described as a good worker who worked to the best of his ability and the respondent invested a good deal in his training. The claimant had a fiery temperament but the respondent could normally deal with this. The respondent and other witnesses told the Tribunal that the claimant had been working for another employer for some time before he resigned from his job with the respondent.

The respondent received a report that the claimant was spending a long time on his mobile phone while he was supposed to be working for her and therefore introduced a rule whereby mobile phones were not to be used while at work. However it was O.K. to use them during

breaks and she was not preventing staff from keeping their phones in the back of the premises. This rule was outlined to the claimant during a meeting between the respondent and he on 29<sup>th</sup> October 2010 and the respondent was satisfied that the claimant understood and accepted this.

However on the 3<sup>rd</sup> November 2010 the respondent noticed that the claimant had his phone on the table while preparing sauces and when she asked him about this he became very angry and told her to f—k off, slammed a folder on the table, threw something against the wall and stormed out the door. Later on that same day the respondent bumped into the claimant in the town and was expecting him to be angry but he was not and asked her for his P45. The respondent told him that his job was still there for him if he wanted it but he chose to ignore this and again asked for his P45. The respondent sent the P45 and any wages due to the claimant by registered post and subsequently rang him to drop the shop keys in to the shop. The claimant called to the shop and the atmosphere was calm. There was an amendment necessary on the P45 and this was done on the spot.

The respondent told the Tribunal that she did not want to lose the claimant as an employee as he was a valued member of staff.

### **Claimant's case**

The claimant confirmed that there had been a meeting between himself and the respondent on 29<sup>th</sup> October 2010, during which he was told not to use his mobile phone in work. He understood that he could bring the phone with him but must not have it turned on while working. However his account of what happened on 3<sup>rd</sup> November 2010 differed from what the respondent said insofar as the claimant told the Tribunal that the respondent told him to leave as he was fired. The claimant also denied slamming a folder down, throwing something against the wall and using abusive language to the respondent.

Later on that day the claimant met with the respondent in the town but the respondent did not offer him his job back and there was no discussion about him returning to work. The claimant told the Tribunal that at the time of his dismissal he was not working elsewhere and did not return to employment until he began a training course in December 2010 which ran for eight weeks. This training course subsequently led to a job but not until May 2011 and it lasted for one year.

### **Determination**

The Tribunal carefully considered the evidence adduced at the hearing. There was a clear conflict of evidence between the parties. On the one hand the claimant stated that he was dismissed from his employment with the respondent and never offered his job back. On the other hand the respondent stated that the claimant left of his own volition and would not return to work even when he was told that the position was still open to him.

On the balance of probabilities the Tribunal preferred the evidence of the respondent and is satisfied that the claimant was not dismissed, unfairly or otherwise, by the respondent but rather he left of his own volition. Therefore the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

As the claimant left without giving notice to the respondent he is not entitled to any notice from the respondent and accordingly the claim under the Minimum Notice and Terms of

Employment Acts, 1973 to 2005 fails.

It was common case that the claimant was not paid for Public Holidays in accordance with the Organisation of Working Time Act, 1997 and the Tribunal awards the claimant €1,300.00 under this Act.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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