

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.

UD488/2011
RP673/2011
MN527/2011

Against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Mac Carthy S C

Members: Mr E. Handley
Ms M. Maher

heard this claim at Dublin on 2nd July 2012 and 22nd October 2012

Representation:

Claimant: SIPTU, Membership Information &, Support Centre, Liberty Hall, Dublin 1

Respondent: Sean Gallagher & Co, Solicitors, Merchants' Court, 24 Merchant Quay, Dublin 8

The determination of the Tribunal was as follows:-

Background:

An unfair dismissal claim was lodged in respect of an employment which commenced in April 2005 and ended in late June 2010. The respondent contested that it was an unfair dismissal or a redundancy situation and advised the Tribunal that they had no difficulty with re-instatement of the claimant under new terms and conditions. The claimant's job is still there. The respondent stated that pay cuts were necessary due to a reduction in turnover and to protect jobs and this was agreed and accepted by the Trade Union.

Claimant case:

It was the claimant's evidence that she was forced to resign because of new terms and conditions imposed on her. She was required to take a lesser rate of pay, no travel allowance, lesser Sunday rate of pay. She wrote to the respondent on 9th September 2010 advising them of her decision but had not worked for them since 2008. The claimant gave evidence of loss.

Determination:

Section 1(b) of the Unfair Dismissal Act defines dismissal as:

“ the termination by the employee of her contract of employment with her employer whether prior notice of the termination was or was not given to the employer in the circumstances in which, because of the conduct of the employer the employee was or would have been entitled or it was or would have been reasonable for the employee to terminate the contract of employment without giving prior notice of the termination to the employer”

This definition has two elements, one built around the word “entitled” and one built around the word “reasonable”. An employee is entitled to terminate a contract when there is a fundamental breach of the contract by an employer. In such a situation it is settled law that an employee may elect to adopt the breach and continue to work, or treat the breach as a repudiation of the contract and resign.

An employee who so resigns would be “entitled”, within the meaning of the section of the Act (as quoted above).

The Tribunal therefore finds, as a matter of law, that the claimant was dismissed. The respondent did not adduce any substantial grounds, such as redundancy, to justify the dismissal as is deemed to be unfair within the meaning of Section 6 of the Unfair Dismissals Act.

Under Section 7 of the Act compensation is to be “just and equitable having regard to all the circumstances”. Having considered earnings of the claimant, before and after the employment ended and documentary evidence produced, the Tribunal finds that a sum of € 4,250.00 is appropriate and awards compensation in that amount.

The claim under the Redundancy Payments Acts, 1967 to 2007 fails.

As no evidence was adduced in the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 this claim also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)