

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - *claimant*

CASE NO.

UD1106/2011

against
EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms C. Egan B L

Members: Mr T. Gill
Ms H. Murphy

heard this claim at Galway on 30th January 2013

Representation:

Claimant(s) : Mr. Brendan Browne BL instructed by Ronan Murphy, Solicitors, 108
Bohermore, Galway

Respondent(s) : Mr Bernard O'Keeffe, 110 Canberra Road, Charlton, London,
SE7 8PE, England

Claimant's Case

The claimant gave evidence that she commenced working for the respondent supermarket store in April 2007. She was employed as a store operative and encountered no difficulties in her employment up to January 2010. At that time a new manager (Mr D) was appointed and in June 2010 he told her that he had received complaints from two other staff members that they were carrying her (the claimant) in the workplace. He asked her if she had a problem with her back and she admitted that she had some wear and tear to her back. However this did not prevent her from carrying out her duties and she gave evidence that she frequently lifted fuel and gas cylinders into customer's cars. (Mr D) requested that she attend her doctor and obtain a fit for work certificate. She visited her doctor and her doctor informed her that this request was unwarranted as she was not absent from work due to illness and she had not refused to carry out her duties. Her doctor informed the respondent of this by way of letter which she presented to the respondent.

She continued to work for the respondent but subsequently felt there was a change in her working relationship with (Mr D). Her working hours were reduced and became very erratic.

On 19 November 2010 she was told that the area manager (Mr H) and the Human Resources Manager (Mr K) wanted her to go to the office for an informal chat. She had no forewarning of this meeting. She was unprepared for the meeting as it had been sprung upon her. She had never received any warnings prior to this meeting. She went to the office and met with (Mr H). (Mr K) left the room at the commencement of the meeting. (Mr H) then put a number of issues to her concerning breaches of company policy, family members not paying for goods in the shop, her daughter entering the shop on rollerblades and her daughter entering the staff area of the shop. It was also put to her that she had her handbag behind the tills in the shop which was in breach of company policy.

She gave evidence that she felt very intimidated at the meeting. She was not shown any CCTV footage at the meeting. She accepted that she had her handbag at the tills area of the shop and was aware that this was in breach of company policy. She told the Tribunal that she had given her son goods without payment on four or five occasions but she would pay for them at the end of her shift or at the beginning of her next shift. She gave evidence that (Mr H) told her that she could invoke the company disciplinary procedure if she wished or if she went now it would be easier for her and she would be given a letter for social welfare. She felt that the decision was pre-determined and the end result would be the same, she would be gone. She gave further evidence that (Mr H) said he did not want any trouble from her two boys. This really hurt her and she just wanted to leave the premises. As she left she told a work colleague that she had been sacked. She denied that she resigned from her employment and stated that there was no mutual agreement concerning the termination of her employment. She accepted that (Mr H) never said that she was dismissed from her employment but she was not encouraged to invoke the disciplinary procedures. Since the termination of her employment she has been in receipt of social welfare. She has also up-skilled and intends to go to university in September 2013.

Respondent's Case

The area manager (Mr H) gave evidence that he had a discussion with the shop manager (Mr D) concerning issues involving the claimant which had been viewed on CCTV footage. This footage had shown the claimant serving family members without payment, taking a bag of crisps without payment, and her daughter in the shop on rollerblades. The footage had also shown the claimant's handbag in the tills area which was in breach of company policy. The witness gave evidence that he met with the claimant on 19 November 2010 to have an informal discussion about these issues. The claimant was offered representation at the meeting on three separate occasions but declined the offer.

The witness gave evidence that the claimant admitted to having her handbag at the tills area and to serving a family member hot chocolate without payment. She asked if she was going to be sacked and he replied that an investigation would have to be carried out in line with company procedures. He told her that he could not make any decision until he carried out an investigation. However the claimant said she wanted to leave and did not want other staff members talking about her. In so doing the claimant stopped the disciplinary process. The process did not go any further as the claimant did not want it to go any further. The witness told the Tribunal that if she had not left her employment she would have been suspended on pay pending an investigation. He gave evidence that it was the claimant's decision to leave and she did so of her own accord. The respondent did not dismiss her or ask her to leave her employment.

Determination

The Tribunal having carefully considered the evidence and submissions of both parties is not satisfied that the respondent acted in an unreasonable fashion under the circumstances. The claimant failed to convince the Tribunal that undue pressure had been brought upon her not to invoke the respondent's disciplinary procedures. It is the unanimous decision of the Tribunal that the termination of the claimant's employment was brought about by mutual agreement and in those circumstances the Tribunal finds that the claim under the Unfair Dismissals Acts 1977 to 2007 fails and is hereby dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

