

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE - *appellant*
against
EMPLOYER - *respondent*
under

CASE NO.
MN358/2011
UD366/2011

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr M. Noone
Mr M. O'Reilly

heard this claim at Dublin on 2nd July 2012

Representation:

Claimant(s) : Dr Gerard McMahon, Productive Personnel Limited, 48 Hannaville Park,
Terenure, Dublin 6w

Respondent(s) : Pdraig Murphy, Solicitors, 54 South William Street, Dublin 2

The determination of the Tribunal was as follows:-

Background:

The claimant is a Polish National having arrived in Ireland in 2007 to work. The claimant commenced employment in May 2010 in the respondent's bar. She did not receive a contract of employment straight away but remembered signing a form, with lots of blanks, in mid August 2010. This was just after she informed the respondent that she was pregnant. She questioned the blanks and her employer got very agitated and aggressive with her. She was told she would get the contract the following Wednesday, but did not.

On October 6th 2010 the claimant was sent a letter stating her bad time keeping was "*unacceptable, and damages our business as people go elsewhere. This is an official warning*". On entering the property on October 29th 2010 the respondent said he noticed a pool of water beside the ladies restroom. A complaint was received from a customer concerning the water after slipping on it.

On November 11th 2010 she received a letter with her payslip concerning the matter on October 29th 2010 and was informed that it was a formal warning. The letter also stated that she had not

been attending to her duties which she had been shown to do. It also stated a second warning she had been given due to use of her mobile phone while customers were waiting to be served.

A letter dated November 17th 2010 was sent to the claimant explaining her probationary period would not be extended and was given notice of her termination.

Claimant's Position:

The claimant stated she had never seen the list of staff instructions. She had also had not received the letter dated October 6th 2010 and there had been no pool of water by the ladies restroom on the day in question. In respect of the use of her mobile phone she stated that a previous Manager rang her daily. She stated that she had been told she would work alone and to contact him if she needed anything. She told the Tribunal that she never received the letter dated November 17th 2010.

She told the Tribunal that she had noticed a big change in the relationship with the respondent after she informed him she was pregnant. She agreed that she had received one warning.

On cross-examination she stated that some of her other colleagues used their mobile phones while on duty. The respondent had not spoken to her concerning any excessive use of her mobile phone while on duty. When put to her she stated that she had not received the email dated November 17th 2010 nor the letter of termination dated November 17th 2010. She had received one blank email from the respondent. She received a text to inform her she was dismissed. She told the Tribunal that she had made complaints concerning many issues.

When asked by the Tribunal she said the respondent had been very angry about the pool of water but she told him that she had not seen it. The claimant gave evidence of loss.

Respondent's Position:

The owner / Director of the respondent company gave evidence. He stated that he had given the claimant a contract of employment when she commenced employment and a list of staff instructions. He also sent it by email. He asked the claimant on a number of occasions to sign and did so on 10th October 2010.

The role the claimant carried was not very demanding. She served beverages and the premises were quiet during the day. The claimant was very frosty with customers and they did not seem to take to her. She was often late to work and would be on calls on her mobile phone while customers were waiting to be served. He spoke to her about it on a number of occasions. She said she would do better in the future.

On October 29th 2010 he attended the premises and found a pool of water outside the toilets. He mopped it up but a customer complained he had slipped on it. The respondent spoke to the claimant concerning the matter.

The claimant was very upset when she informed him she was pregnant. He told her not to be lifting anything heavy. He told the Tribunal that he had not treated the claimant differently. The claimant had asked him three times if she had wanted her to leave. She made no complaints to him. She had not been dismissed for being pregnant it was because of her work performance and was not extending her probationary period.

On cross-examination he stated that he had sent some emails for the claimant to a wrong address but she had received her payslips by email. He said that he had received the letter concerning the claimant's maternity benefit and had handed it to his accountant.

The claimant's then Supervisor gave evidence. He stated he had handed an envelope to the claimant with a list of staff instructions. The list was also displayed beside the alarm pad and lights. She had made no complaints to him.

Determination:

Having considered the evidence adduced and the submissions submitted the Tribunal find that on the balance of probabilities the claimant was unfairly dismissed. However, the Tribunal are very mindful of the warnings given to the claimant and the issues concerning her performance during her employment.

Accordingly, the Tribunal awards the sum of of € 7,000.00 under the Unfair Dismissals Acts, 1977 to 2007 to be an equitable and fair amount of compensation.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)