

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD364/2011

Against

EMPLOYER
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr D. Morrison
Ms R. Kerrigan

heard this claim at Donegal on 19th June 2012 and 24th September 2012

Representation:

Claimant:

Respondent:
The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant worked as an Accounts Assistant in the respondent's insurance firm. She began to work for them in 2004. Initially she worked a three day week then a two day week. In 2008 she was advised she had to work from home and was given remote access. The claimant had to share a P.C. when she logged in so was not always able to gain access. It was always after mid-day before she could log in. She did request a return to the office but was not allowed.

On 13th May 2010 she was contacted by the Manager (AT) regarding an error, it was a casual call and was told the error had been rectified. A policy had been marked as lapsed even though it wasn't. The claimant was never advised of a warning or anything like that.

A second issue occurred on 20th July 2010. She received an e-mail and rang the Managing Director (PB) to explain, he hung up on her. She was shocked. She was then asked to attend a disciplinary hearing the next morning.

At the meeting the claimant was given no advance warning as to what it was about, she was given no opportunity to have representation and was brought before PB and AT.

She was advised that the respondent had no choice but to reduce her pay by half and would be given lesser accounts to work with or she could accept a severance package of 3 months pay.

PB was irate, aggressive and she felt bullied by him. She felt he was dismissive of her and it didn't matter what she had to say he had his mind made up. She felt she had no alternative but to accept the severance package.

The claimant's Accountant gave evidence. The claimant was now operating as a sole trader and had lost her PRSI tax credits when her employment was terminated and had a loss of € 5,880.00.

Respondent's Case:

In May 2010 it came to PB's attention that a house insurance policy had not been renewed, which was a very serious matter. He asked AT to speak to the claimant as it was one of her accounts. In July 2010 a second issue arose and AT investigated the matter. Another policy had lapsed. AT contacted the insurance firm involved and asked for the policy to be re-instated which they did but they informed AT that the insurance company would not be liable for the period from January to July 2010. The respondent would have to be liable. PB was contacted by the claimant regarding this issue. PB said he could not discuss the very serious matter over the telephone.

AT contacted the claimant to attend a meeting on 22nd July 2010. PB, AT and the claimant were present. They explained the seriousness of the matter and that fact it could not continue as it could potentially have a huge financial loss for the company. The claimant apologised, said things could get "on top of her" and that it was a genuine mistake. PB felt she did not understand of the amount of money it could potentially cost the company. At the time the claimant was working on five accounts. She was offered three options:

1. To be taken off the accounts in question and therefore there would be a reduction in wages.
2. To accept a severance package.
3. She could be dismissed.

An email was sent to the claimant regarding the options. She replied requesting the severance package. On 7th August 2010 AT sent out the severance package and her P45. No response was received until 30th August 2010 from the claimant's representative stating the claimant had no alternative but to accept the severance package and was referring the matter to the Rights Commissioner.

The respondent felt the procedures used were fair and reasonable in the circumstances.

Determination:

The Tribunal carefully considered the evidence adduced and submissions made in this matter on behalf of both parties.

In this case the claimant was working in a very responsible position, dealing with insurance policies for which substantial premiums were being paid to ensure that insurance cover would be available to her employers' customers. Part of her responsibility was to examine payments made to the respondent and to direct the lapsing (cancellation of cover) of policies where payments had not been made. This work was of a highly responsible nature due to the potentially serious consequences of any mistake being made. It is common case that in or around May, 2010 the claimant had mistakenly listed a policy to be lapsed despite the fact that payment had actually been made. This was a house insurance policy. The mistake was noticed by the respondents Managing Director and he directed AT, the claimant's Manager to speak to her about this serious mistake. The claimant states that she was never given any formal warning over the mistake; however, she could not but have been aware of the potential seriousness of the mistake made by her. Subsequently in July, 2010, a further issue arose where the claimant had again mistakenly lapsed an insurance policy. In this case, the mistake was not noticed in-house until after a considerable period of time had passed. The respondents then contacted the insurers concerned and arranged for the policy to be put into place, but the insurers refused to confirm cover for the period up to the date of the noticing of the mistake. In other words, the respondent would be liable for any potential claim made against that insurance policy arising in the period from its renewal date. This was a commercial insurance policy and any claim on the policy which was made in the future related to this period could be extremely costly for the respondent. Furthermore, the respondent could have been liable for any immediate claim made between the renewal date and July, 2010. In the circumstances, the claimant was invited to a meeting with the Managing Director, the Manager and herself on the 22nd July, 2010. This was a disciplinary meeting and so notified. The claimant did not deny that she had made the error and the respondents Managing Director felt that she did not appreciate the potential seriousness of the error at this matter. At the meeting it was explained to the claimant that the Company could not afford any further such errors and she was given the option of moving to a different and less responsible area which would mean shorter hours and lesser pay, taking a voluntary severance package or dismissal. In the circumstances, the claimant chose to accept the voluntary severance package after consideration and same was paid to her.

The claimant at the hearing before the Tribunal advised that her working conditions were not ideal, she had to use remote access and the computer was not always available, and this had led to these mistakes. However, the Tribunal were not satisfied that the possibility of errors arising had been brought to the attention of the respondent. The claimant also felt that the Managing Director of the respondent was rude to her and dismissive and had his mind already made up before the disciplinary hearing. She felt that she had no alternative but to accept the severance package and that the procedures followed were not fair.

In all the circumstances of the case while the procedures followed by the respondent were not best practice, the facts of the matter were not in dispute. One error had been made by the claimant which was potentially quite serious, but which had been noticed by the employer before any damage was done, then another more serious error was made which could potentially have lead to the closing of the respondents' business. In the circumstances, it would have been reasonable for the respondent to have dismissed the claimant. As it happened the claimant did accept a severance package from the respondent and so the Tribunal finds that the claimant was not dismissed by the respondent.

Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)