

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1440/2011
WT571/2011
MN1531/2011

against
EMPLOYER

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr N. Russell

Members: Mr J. Browne
Mr J. Jordan

heard this claim at Wexford on 29th January 2013

Representation:

Claimant: REP

Respondent: REP

The claim under the Unfair Dismissals Acts, 1977 to 2007 was one of constructive dismissal, accordingly it fell to the claimant to make her case.

Claimant's Case

The claimant told the Tribunal that she was employed with the respondent for three years. She commenced employment in March 2008 and her job was car valeting. She originally worked in a location where facilities were good and she had no problems. The business then moved location and the claimant said that her conditions of employment worsened. The employer told employees that bank holiday pay would not be given, breaks were non-existent, there were no ladies toilets on the facility and on her days off she had to stay by the phone until 1pm in case she was called to work. She tried to speak with her employer but he told her if she wasn't happy to "go". On her second occasion to speak to him she gave him two weeks' notice, he wasn't happy but they didn't speak again.

Respondent's Case:

The respondent gave evidence that the claimant would do 4 or 5 mini car valets in a day. She sometimes acted as supervisor and he was aware that she had a problem with one or two staff who wouldn't take instruction from her. He stated that he "disciplined them". When the business moved location the staff had access to the toilets in a nearby shop, it wouldn't have been a problem for the claimant. He did stop bank holiday payments but was informed by NERA that he couldn't do so, the monies were paid back to employees. He never told the claimant to wait until 1pm for a telephone call. The claimant told him that she was not able for the work, it was too hard and too cold. He was sorry to lose her and always treated her with the utmost respect.

Determination:

The Tribunal finds that the claimant was unfairly dismissed. The claim under the Unfair Dismissals Acts 1977 to 2007 succeeds. Taking all the circumstances of the case into account the Tribunal awards the claimant €3,000 compensation.

A claim for minimum notice does not arise in a case of constructive dismissal, therefore the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2007 must fail and is therefore dismissed.

No evidence was adduced in relation to the claim under the Organisation Of Working Time Act, 1997 and therefore this claim is also dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)