

EMPLOYMENT APPEALS TRIBUNAL

| APPEAL(S) OF: | | CASE NO. |
|---------------|---------------------|------------|
| EMPLOYEE 1 | <i>-appellant A</i> | UD837/2011 |
| EMPLOYEE 2 | <i>-appellant B</i> | UD838/2011 |
| EMPLOYEE 3 | <i>-appellant C</i> | UD896/2011 |

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Hennessy
Mr F. Dorgan

heard this appeal at Kilkenny on 1st November 2012

Representation:

Appellants: Ms. Rachel Hartery, SIPTU, Membership Information & Support Centre,
Liberty Hall, Dublin 1

Respondent: No appearance or representation on behalf of the respondent.

The determination of the Tribunal was as follows:

These appeals came before the Tribunal by way of employees (the appellants) appealing against the recommendation of a Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007, references r-090766-ud-10JOC, r-092846-ud-10JOC and r-092938-ud-10JOC.

It was appellant A's uncontested evidence that she worked for the respondent as a carer, one day per week, until the 15th February 2010. From June to November 2009 the employment became "unbearable" due to the treatment she received when her employer

discovered that she held union membership. Appellant A was absent on sick leave as a result but subsequently submitted a final medical certificate to the respondent which stated that she was fit to return to work. In or around this time, appellant A also attended the company doctor who agreed that appellant A was fit to return to work but this was not accepted by the respondent and appellant A subsequently received a P45 through the post. Appellant A gave evidence pertaining to loss.

It was appellant B's uncontested evidence that she worked for the respondent as a care assistant. Appellant B was absent for one week on sick leave and during that week she was dismissed by the respondent. Appellant B gave evidence pertaining to loss.

It was appellant C's uncontested evidence that she was constructively dismissed by virtue of the respondent's treatment of her once it was discovered that she held union membership. The respondent became aware of this from the time appellant C attended a meeting at the Labour Relations Commission. The treatment of her from that time resulted in Appellant C having no option but to resign from her employment. Appellant C gave evidence of loss.

Determination:

Appellant A:

Having considered the evidence adduced at the hearing the Tribunal finds that appellant A's employment with the respondent had been uneventful for most of the period in excess of 6 years that the respondent had employed the appellant. The Tribunal is satisfied that the appellant was unfairly dismissed by the respondent when she was due to return to work from sick leave. Accordingly, the Tribunal awards Appellant A the sum of €11,440 under the Unfair Dismissals Acts, 1977 to 2007, thus varying the recommendation of a Rights Commissioner reference: r-090766-ud-10JOC.

Appellant B:

Having considered the evidence adduced at the hearing the Tribunal finds that appellant B's dismissal was unfair due to the complete absence of any process or procedures. Accordingly, the Tribunal awards Appellant B compensation in the amount of €34,894, thus varying the recommendation of the Rights Commissioner reference: r-092938-ud-10JOC.

Appellant C:

Having considered the evidence adduced at the hearing the Tribunal finds that the appellant's employment with the respondent had been uneventful for most of the period that she had been employed and that it was after the appellant's union membership was known that the respondent became dissatisfied with the appellant. The Tribunal is satisfied that there was conduct such as entitled the appellant to consider herself constructively dismissed. Accordingly, the Tribunal awards appellant C compensation in the amount of €34,320 under the Unfair Dismissals Acts, 1977 to 2007, thus varying the recommendation of the Rights Commissioner reference: r-092846-ud-10JOC.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)