

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE ,

UD1889/2010

CASE NO.

MN1840/2010

*-claimant*

against  
EMPLOYER *-respondent*

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. Lucey

Members: Mr J. Hennessy

Ms S. Kelly

heard this claim at Clonmel on 28th May 2012

Representation:

Claimant:

Respondent:

### **Claimant's case:**

The Tribunal heard evidence from the claimant who is a registered pharmaceutical assistant (RPA). The respondent is a pharmacy and also deals in veterinary products. She is not a registered pharmacist but can dispense medicines in the absence of a pharmacist. The qualification of a RPA ceased to be in the mid 1980's. She worked for 18 hours per week in the respondent company.

The employment was uneventful until "two crucial periods" in May 2010. On Wednesday 05th May and Thursday 06th May 2010 the owner of the respondent pharmacy (JOS) was away. On 5th May there were a number of prescriptions to be collected by customers. She was doing prescriptions when a customer arrived and the technician (S) went to him. The owner's wife (FOS) told the claimant that there was a customer waiting. She told JOS that S had gone to speak to the customer. She told JOS that S was dealing with the customer.

Late that evening it was extremely busy and she asked MOS who was the owner's mother if she could arrange for her to get help. She felt that it was S's job as a technician to be behind the desk helping with pharmacy duties. She felt that when the owner was away it was a regular occurrence for S to overlook pharmacy duties.

On Thursday morning a veterinary called into the premises and S went to attend to him. She told S to leave the veterinary duties and general shop duties because there was four assistants

for that area and there were only two of them for the prescriptions. S responded by directing a tirade at her. S told her that her boss was JOS and that she had no right to ask her to do anything. She was flabbergasted because a customer was present and so was MOS and they could hear this tirade.

JOS returned at 3.30 or 4.00 on Thursday evening. She told him that she needed to speak to him and related the incidents to him. JOS told her that he would speak to S. As far as she knew he spoke to her but she did not know what he said. She asked him what S told him and he told her that S was fine and accepted that what she said was correct.

On Friday 08<sup>th</sup> she spoke to JOS and told him that she did not want to be a key holder anymore as he was not going to ensure that the staff would support her. She held the key if emergency prescriptions were needed. She gave him back the key because she was exasperated with the situation. She did this to try and manoeuvre him to get the staff to help out more as it was a busy pharmacy. She handed him the key and he then told her that his wife (FOS) told him that she had been sharp with her on Wednesday. She was shocked to hear this and told him that "somebody does not want me around here, I am going".

She got her jacket and left the shop. JOS followed her and asked her not to leave. She left as she "was beyond reason at that stage". The claimant explained that she was probably not thinking clearly at that stage but it seemed like the only thing that she could do. It seemed that she was no longer wanted.

She was on leave on Saturday 09<sup>th</sup> and was not due into work until Tuesday 12<sup>th</sup>. She phoned JOS on Monday 11<sup>th</sup> as she felt that she had just "had a rant". JOS told that she had walked out on Friday and that she would not be coming back. She told him that he could not do that to her. A meeting was arranged for that evening.

They met that evening and it was discussed that she would cover for temporary absences; for future temporary absences. He asked her if she was stressed and did she want shorter hours. She said that she did not and as she was building a house she needed to work. He knew that she was building a house.

He told her that he was not going to make a decision that evening regarding her job that he needed to speak to his wife (FOS). She told him that she needed her job. They spoke about what would happen if she resigned and he told her that she would get a glowing reference. She did not resign. She had thought the meeting was about re-integrating her into her job as the discussion was about hours and cover for absences. She thought her job was secure. He did mention to her that his wife told him that he was not to take her back without discussing it with her.

She received a phone call on Tuesday a 6.00pm from JOS and he said that he would need another 24 hours.

He phoned her on Wednesday inviting her to a meeting. He told her that they were not going back to the way they were. He thanked her for her support and work over the years.

The claimant gave evidence as to her loss.

**Respondent's case:**

The Tribunal heard evidence from the owner (JOS). He explained that he is a director of the

company and his wife and mother are directors. They have three full time staff and three part time staff. One staff member is 46 years with the company another has 20 years' service and two have 12 and 15 years' service. His mother has 50 years' service.

He agrees that the claimant role was as described and her role was important. It he had to go anywhere he needed someone qualified to cover; it was vital to have someone qualified to do the work.

The claimant gave good service to the company. They had had their disagreements. There had been incidents. One of these was that the claimant made him change the staff rota for lunch breaks.

There had been the incident whereby his wife (FOS) informed the claimant that a prescription was to be filled. The customer needed advice on another matter and S dealt with the customer. The claimant placed the prescription on the counter in a manner that was not nice. The claimant told FOS that it was not right that two people dealt with the same customer. The claimant's tone was not pleasant.

He arrived to work at 2.30 pm and the claimant told him of an incident whereby S spoke back to her. He spoke to S and to his mother who witnessed the incident. S told him that the claimant was quite aggressive. On Friday 08<sup>th</sup> he spoke to the concerned parties.

When he spoke to the claimant she handed him the key to the pharmacy and said that she did not want to be a key holder. He told her that he was not happy with the tone that she used to FOS on a previous occasion. The claimant told him that she did not believe what she was hearing. The claimant took her bag and coat. He pleaded with her three times not to go. She told him that she had planned to build a house but supposed that it was gone now. He was under no illusion other than that she had resigned.

He had no word from the claimant until Monday. He spoke to her and he told her that she had resigned the previous Friday. They agreed to meet and met that day.

They spoke about things and he told her that he had received a complaint from a customer on Friday 08<sup>th</sup>. The customer complained that the claimant used a raised voice.

At the meeting the claimant said that she would apologise if that was what it would take. The claimant did not show remorse. The claimant had withdrawn her professional service and was unapologetic.

He told her that he would speak to his family regarding taking her back. The claimant had threatened him in the conversation that she would take a constructive case. He met her on Wednesday and told her his decision.

He did not feel that he had dismissed her. She told him four times that she was leaving and revoked her professional cover and he had to rely on locums.

The Tribunal heard evidence from FOS.

**Determination:**

It must be noted that both parties wished to give evidence first and both parties agreed that the

claimant would give evidence first.

The Tribunal having heard the evidence adduced in this case and the submissions from the representatives determines that the dismissal was unfair under the Unfair Dismissals Acts, 1977 To 2007. There were no procedures and no grievance procedures. There was no contract of employment. It seems that the claimant did express a grievance to the employer but the employer did not follow up or properly investigate the grievance but chose to interpret the claimant as having resigned. The claimant spoke to the employer on Monday with the view that her words had been merely “a rant”.

In this case the employer did not behave reasonably by choosing this path. As already said no grievance procedures were invoked by the employer and no disciplinary procedures were invoked, should they have been so necessary.

The Tribunal determines that the claimant was unfairly dismissed and awards the claimant the sum of €10,000.00, as is just and equitable having regard to all the circumstances, under the Unfair Dismissals Acts, 1977 To 2007.

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

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)



