

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

EMPLOYEE – **Claimant**

UD2362/2011

RP2918/2011

MN2377/2011

against

EMPLOYER - **Respondent**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms O. Madden BL

Members: Mr M. Noone  
Mr T. Brady

heard these claims at Dublin on 18 April 2013

**Representation:**

Claimant:

Respondent:

The determination of the Tribunal was as follows:

At the outset the claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn.

**Preliminary Issue**

A preliminary issue was then raised on behalf of the respondent in respect of the Tribunal's jurisdiction to hear the claim under the Unfair Dismissals Acts.

The claimant was employed from 8 May 2009. On 17 May 2011 the respondent wrote to the claimant to advise that she had been dismissed for gross misconduct and that she was to be dismissed with one week's notice. The claimant appealed the decision to dismiss her and the appeal hearing was conducted on 26 May 2011. The decision of the appeal was to confirm the dismissal. The respondent's position was that the claimant was written to the same day, 26 May 2011, confirming the sanction of dismissal. The claimant's position was that she did not receive this letter until 1 July 2011. The claimant's form T1A in which her claim was submitted was received by the Tribunal on 8 December 2011

It was the respondent's position that as 8 December 2011 was more than six months after the date of dismissal on 24 May 2011 there was no jurisdiction to hear the claim. The claimant's position was that the date of dismissal was 1 July 2011, the date on which she received notification of the result of the appeal. In the alternative the claimant's position was that there had been a lapse in communication between her and her representatives on account of her moving to Kerry in order to secure alternative employment preventing her claim being lodged until 8 December 2011.

### **Determination**

When the respondent wrote to the claimant on 17 May 2011 it was to dismiss her for gross misconduct and in such circumstances there would normally be no entitlement to notice. Nevertheless the respondent gave the claimant one week's notice. As an employee with more than two years' service at the time the claimant's statutory entitlement to notice was two weeks. Leaving aside the question of whether the respondent was or was not justified in dismissing the claimant for gross misconduct the Tribunal is satisfied, for the purposes of this decision, that the respondent is entitled to rely on the letter of 17 May 2011 as being a letter of dismissal. The latest effective date of that dismissal is 31 May 2011 if the claimant were entitled to notice. Absent any suggestion that the contract of employment provides that an employee be kept in employment pending the outcome of an appeal the Tribunal is satisfied that the claim was not filed within six months of the date of dismissal as provided in Section 8 (2) (a) of the Unfair Dismissals Acts. The Tribunal is further satisfied that the claimant has not shown that exceptional circumstances prevented the lodgement of her claim within the six months of the date of dismissal so as to allow an extension to twelve months as provided in Section 8 (2) (b) of the Unfair Dismissals Acts. Accordingly, there is no jurisdiction to hear the claim under the Unfair Dismissals Acts, 1977 to 2007.

The respondent having conceded this issue the Tribunal awards €250-00, being one week's pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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