

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE,
(*claimant*)

CASE NO.

UD2251/2011

Against

EMPLOYER (*respondent*)

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms F. Crawford B.L.

Members: Ms J. Winters
Mr P. Trehy

heard this claim at Drogheda on 27th March 2013

Representation:

Claimant(s) :

Respondent(s) :

The determination of the Tribunal was as follows:

The claimant commenced her employment with the respondent on 10th September 2007 as a cleaning attendant. The HR Manager for the respondent told the Tribunal that when the claimant started her employment with the company, staff were not obliged to obtain Garda clearance. However from 2011, Garda vetting was requested (when new regulations were introduced by the HIQA) by a major client of the respondent who was responsible for the care of the elderly in nursing homes. The respondent held a cleaning contract for work in certain nursing homes under the ownership of client H.

The HR Manager told the Tribunal that when the claimant completed the Garda application form, she entered "no" to the question "have you ever been convicted of an offence in the Republic of Ireland". When the Garda Síochána vetting disclosure was returned, it revealed no convictions had been recorded against the claimant. Supplemental documentation from a Garda Superintendent showed that the Probation Act had been applied in relation to a prosecution for an offence in February 2007. However, on foot of the Garda report, on 25th May 2011, the respondent's client requested that the company move the claimant to another site. That same day, the HR Manager informed the claimant of what the client had instructed and told her that she would get back to her in a couple of days.

Although the respondent felt the demand by the client was unfair to the claimant, the HR Manager indicated that they had no choice but to move the claimant as it was a big contract with 10 employees working at this particular site. On 9th June, 2011 the HR Manager told the claimant that she would not be able to continue working at that particular site and when a move was mentioned to another site, the claimant was adamant she did not want to move.

On 16th June, 2011 the HR Manager told the claimant that the move to another site near her home was in order, but the claimant refused the offer. A letter was issued to the claimant dated 17th June 2011 proposing a move to another site on less hours. Further details were attained from the Claimants Solicitor who had represented her in the District Court showing that the claimant had been prosecuted for an offence dating from 5th December 2006 and the Probation Act applied in February 2007.

On 22nd June, 2011 the HR Manger met the claimant at her place of work in the nursing home and asked her would she take the other job offer but the claimant refused. The HR Manger then terminated the claimant's employment that same day. The dismissal letter stated that the reason for the termination was "due to the Claimants failure to disclose a criminal record on both the Employee Application form and the Garda Vetting Application form, which you fully understood and admitted to an offence resulting in a court appearance."

Under cross-examination, the HR Manger stated that it was the client who requested that they no longer wanted the claimant working in the nursing home site and as a result the respondent had no option but to concede to this request and subsequently tried to facilitate the claimant elsewhere within the company.

The claimant told the Tribunal that when the Garda vetting report was returned, the HR Manager told her on 22nd June 2011 that her employment was terminated that same day and that there was nothing that could be done. The claimant indicated that the HR Manager told her that if there was anything she could do she would do it but the claimant said no job offer was made by the HR Manager. According to the claimant, she did not receive the letter dated 17th June 2011 from the respondent offering her a new position on another site. She told the Tribunal that she would have taken the job offer if the respondent had offered one.

The claimant gave evidence pertaining to loss and her efforts to mitigate the loss.

Determination

This claim comes before the Tribunal by way of a claim pursuant to the Unfair Dismissal legislation 1977 (as amended). After hearing the evidence and the submissions made, the Tribunal determines that the claimant was unfairly dismissed from her employment and correct procedures were not used. It is clear that the Claimant had no convictions recorded against her and had been given the benefit of the Probation Act at a previous District Court appearance. This was certified by An Garda Síochána on 4th May 2011. This was also confirmed by the Claimant's Solicitor.

In all the circumstances and having regard to the fact that the claimant is under a duty to mitigate her loss following a termination, the Tribunal believes the correct compensation under the Unfair Dismissals Act to be €5,500.00.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)