

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE

CASE NO.  
UD1755/2011,MN203/2013

against

EMPLOYER  
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. O'Connor

Members: Mr G. Andrews  
Mr J. Flavin

heard this claim at Killarney on 8th April 2013

### **Representation:**

Claimant:

Respondent :

The determination of the Tribunal was as follows:

### **Respondent's Case**

The respondent is the owner and proprietor of a nursing home in the south west of Ireland. Prior to undertaking that role in 2000 she had little experience in managing staff and institutions. At that time and from 1978 onwards the claimant worked as a care assistant in this establishment. However, following a customer complaint her duties in that role ceased. She then commenced work as a housekeeper which predominantly involved cleaning duties. Following a meeting with the claimant on 1 October 2009 the respondent issued her with a first verbal warning. That warning related to her unacceptable performance and attitude at work. This came in the wake of several incidents in which the claimant was reprimanded for her inadequacies in performing her duties.

By that time higher standards in all aspects of running and maintaining the nursing home were now required in order to meet its obligations under the health information and quality authority.

The proprietor told the Tribunal that she and others had given clear verbal instructions to the claimant as well as detailed coaching on how to perform her cleaning tasks. At times this witness also assisted in the cleaning tasks and in doing so found shortcomings in the claimant's work.

However, despite this input the claimant continued to underperform. Following a reported incident with a nurse manager at the end of October 2010 the respondent issued the claimant with a first written warning. Apart from insubordination that warning also referred to the claimant's ongoing poor work performance and attitude at work. By the end of that year the position of nurse manager/matron had changed.

Due to restructuring and financial rearranging the respondent reduced the working hours of the claimant to twenty-five a week. Both the witness and the new nurse manager met the claimant and her sister at a disciplinary hearing in late January 2011. According to the notes of that meeting the sister while there as a representative of the claimant was not a spokesperson for her unless the claimant wanted her to act in that capacity. It was recorded at that meeting that there was some disagreement between the claimant and her representative regarding the claimant's work performance. While that meeting ended amicably the respondent then issued the claimant with a final written warning less than a week later.

On 7 March 2011 the respondent in the person of the nurse manager requested the presence of the claimant to a further disciplinary hearing. The purpose of this meeting was to discuss her poor ongoing work performance as a cleaner. Two days later and in the course of that meeting the claimant was suspended for five days and asked to seriously consider her future with the nursing home. By this stage and despite repeated attempts by the respondent to improve the performance of the claimant her performance still remained less than satisfactory. Prior to a further meeting with the claimant on 15 March the witness together with the nurse manager and outside human resource consultations met and discussed the claimant's case.

Due to a domestic situation the witness was unable to attend that meeting. The attendees there were the nurse manager, an administrator, the claimant and her sister. In the course of that meeting the nurse manager informed the claimant that her employment was being terminated with the respondent. The witness justified the dismissal on the grounds that the claimant had been given ample time and opportunity to improve her performance but had constantly failed to do so. It was accepted by her that the claimant had some learning disabilities and that was taken into account when dealing with her. This witness stated that it broke her heart in allowing the termination of the claimant's employment. That attitude however had to be weighed against the claimant's seemingly inability to do her job probably despite the coaching and warnings. Besides certain standards had to be reached and maintained for the nursing room to function.

An administrator and staff member told the Tribunal that the respondent had discharged all its entitlements to the claimant under the Minimum Notice Acts.

### **Claimant's Case**

According to medical documents presented in evidence the claimant was a lady who carried what was described as an intellectual disability since her childhood. That disability showed itself in her speech and cognitive manner. The claimant also had some difficulties in reading and writing and hearing.

She confirmed to the Tribunal her work record with the respondent and acknowledged her role changed from a carer to a cleaner during her employment there. From her commencement of employment up to the issuing of a verbal warning to her the claimant had not been the recipient of any sanctions regarding her employment. She enjoyed her work at the nursing home and regarded it

as her second home. Initially she shared her cleaning duties with another employee who subsequently left the nursing home. It was the claimant's contention that following the departure of that other cleaner and a reduction in her own hours she was still left with same tasks she had prior to those developments. In addition she did not always fully understand what those tasks were. Following reprimands she felt under stress and that condition actually contributed to her work performance.

Following the meeting and a letter of 9 March 2011 from the nurse manager the claimant was under the impression that her future employment with the respondent was in jeopardy. With that in mind she asked the nurse manager to give her a second chance. That request however was declined and the claimant was subsequently sent a letter from the nurse manager confirming her dismissal.

A sister of the claimant who accompanied her to some of the meetings with the respondent outlined her involvement in this case. Her involvement in her sister's case was somewhat restricted by the respondent who curtailed her input into this case.

### **Determination**

The absence of the relevant nurse manager did not advance the respondent's case as according to the adduced evidence this manager was the person who actually informed and was involved in the decision to dismiss the claimant. Also according to the evidence the decision to dismiss was made prior to a meeting with the claimant on 15 March 2011. The claimant who was asked to reflect on her employment with the respondent prior to that meeting did so and then sought another chance. This was a futile exercise as by then the respondent had already decided to dismiss.

The Tribunal finds in the circumstances that this dismissal was unfair under the Unfair Dismissals Acts, 1977 to 2007. Accordingly the claimant is awarded €17,000.00 as compensation under those Acts.

The Tribunal accepts the evidence of the respondent that it discharged its obligations under the Minimum Notice and Terms of Employment Acts, 1973 to 2005. The appeal under those Acts therefore falls.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

