

EMPLOYMENT APPEALS TRIBUNAL

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

CASE NO.

UD354/2012

MN323/2012

against
EMPLOYER- *respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Ms J. Winters
Mr. J. Dorney

heard this claim at Dublin on 30th May 2013

Representation:

Claimant(s) :
Respondent(s) :

Determination

The Tribunal has carefully considered the evidence adduced. The claimant brings a claim seeking relief under the Unfair Dismissals legislation arising out of an incident which occurred on 4 January 2012. The claimant acted as an in-house accounts manager and gave evidence to the effect that she was the only employee of the company and was very happy and contented in her job.

At the end of 2011 she was disappointed to find out that she was not getting her regular Christmas bonus payment of one week's wages. In evidence the claimant indicated that it was the failure to inform her that the bonus was not been given that was most hurtful to her.

Mr(NB), company director and the claimant's employer only confirmed that there would be no bonus when directly asked by the claimant.

The claimant was away from the workforce for the Christmas period and only returned on 4 January 2012. There can be no doubt that the claimant continued to be annoyed about the lack of bonus and the failure to keep her informed. Later, on that same day of 4 January 2012 Mr

(NB's) wife and co-director of the company overheard the claimant making a complaint about (NB) over the phone. There is some conflict as to what was actually said by the claimant but it is generally accepted that the claimant was complaining about the lack of bonus and her general unhappiness about the situation. Later that same day the claimant was approached by both directors of the respondent company regarding the content of the overheard conversation. The Tribunal finds that there was an exchange between the parties which, with the benefit of hindsight did none of the parties justice.

In evidence it has been submitted that Mr (NB) told the claimant to "go, just go" whilst the witness on behalf of the company indicated that the claimant was told to go home as there could be no resolution on that day. Crucially to the Tribunal the claimant was relieved of the keys to the workplace and this act is seen by the Tribunal as demonstrating an intention to dismiss the claimant. That said, and possibly with the benefit of legal advice the respondent did communicate with the claimant some days later inviting her to a face to face meeting to see if the impasse could be resolved.

For the Tribunal the circumstances outlined are not an uncommon type case where an ill-advised confrontation has occurred and in the heat of the moment parties say things that should not be said. The claimant it must be said knew her employer and gave evidence that she knew of his tendency to have a short fuse. This clear over reaction to the confrontation he instigated on 4 January 2012 may well have been re-considered by him with the benefit of a "cooling-off" period. On the facts it is clear that by 9 January 2012 the employer was attempting to back track from the dismissal and try and resolve matters with a modicum of civility.

Whilst the onus rests with the employer to demonstrate that it acted reasonably and fairly in all the circumstances this does not preclude the claimant's own obligation to act in a reasonable way. In this regard the Tribunal must find that the claimant was unreasonable in not agreeing to the face to face meeting to which she had been invited. It is noted that by 12 January 2012 the claimant's own solicitor had become involved and there was no further engagement between the parties. This is disappointing in light of the 13 year working relationship that existed between the parties.

In conclusion the Tribunal finds that the claimant was unfairly dismissed on 4 January 2012 and awards her compensation in the sum of €10,000.00 under the Unfair Dismissals Acts 1977 to 2007. The Tribunal also awards her the sum of €2,112.00 this sum being the equivalent of six 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)

