

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE,

- *claimant*

UD1465/2011

Against

EMPLOYER - *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr L. O’Cathain

Members: Ms M. Sweeney  
Mr J. Flavin

heard this claim at Cork on the 12 February 2013 and the 29 April 2013

Representation:

Claimant(s) :

Respondent(s) :

The determination of the Tribunal was as follows:-

#### **Preliminary Issue**

The Tribunal heard evidence from the GP of the claimant regarding her history of medical problems including depression and addiction problems. The medical doctor stated that in his opinion it is reasonable to say that the claimant could have missed the statutory deadline for submitting her claim to the Tribunal due to her state of mind at the time. Both her medical condition and dismissal would have distracted her mind significantly.

The respondents representative stated that the doctor’s medical report and the Tribunal application form were both dated the 6 July 2011 which she believed to be crucial in the claimant’s application to extend the time limit to bring the claim.

#### **Summary of Evidence**

The claimant gave evidence of commencing employment with the respondent in July 2007. She worked in the role of care assistant which involved assisting residents with their daily needs, dressing and washing. Her hours varied from week to week and she usually worked weekends.

A good relationship existed between her and the employer and she had no difficulties or complaints against her. On the 15 or 16 November 2010 she was asked to meet with the general manager. Her line manager requested she attend the meeting and was also in attendance. The Garda vetting form was put before her and she recalled completing the form a few months previously. Each incident listed on the Garda report was discussed and she admitted to the employer that the period in question was a difficult time in her life which she had managed to since turn around. In completing the form to authorise the vetting she ticked the box "no" regarding the question on any convictions. She did this believing that although she had fines and probationary issues she had never been convicted or imprisoned. Her evidence to the Tribunal was that she got no assistance completing the form and made an error. At that meeting the manager indicated to her that he was concerned how her vetting report would be viewed by HIQUA which was the regulatory authority for residential and nursing home care. She offered to meet with HIQUA and the owner; however this offer was not accepted.

The next meeting took place on the 22 November 2010. She had no prior indication what the purpose of that meeting was or no idea of any possible consequences. She was not advised whether she should bring along any representation or seek legal advice.

The manager informed her that he had no option but to dismiss her. She pleaded for her job as it was accepted the respondent had no problem with her work. A resignation letter was produced by the manager which surprised her greatly and it was at that point she realised her job was gone. She never signed the resignation letter and received a €1000 payment. She did not leave her employment voluntarily as she needed to work.

The first witness for the respondent the general manager gave evidence of having no difficulty with the claimant or her work. When HIQUA was established in 2009 all employees of nursing homes and care homes were required to be vetted. This process had to be completed by September 2009. Other requirements included each employee having a signed contract of employment and a medical certificate declaring them fit to work. In August 2009 all employees were asked to complete and sign a Garda vetting form giving the employer permission to carry out the vetting process. Employees were offered assistance completing the form if required and should they have any concerns were asked to come forward to discuss any difficulties they had. The claimant never sought such assistance or advice. The claimant's vetting report contained four incidents. He sought advice from HR consultant and HIQUA on how to proceed. His concerns were about the claimant's suitability and an issue of honesty arose as she had not given any prior indication of the convictions. At a meeting with the claimant on the 15 November 2010 she admitted to the incidents listed. HIQUA did not get involved in the process and the HR consultant deemed the matter serious. A further meeting took place at 3.30pm on the 19 November 2010 and although he sought advice from the directors of the organisation he took the final decision. At a meeting on the 22 November 2010 where he offered the claimant the option of bringing someone along he advised her that due to the seriousness of the vetting report and considering the lack of honesty on her part he would be proceeding to the disciplinary process. As he had acknowledged, she was a good employee and he suggested she resign and offered her a lump sum payment of €1000. The claimant considered the offer and accepted by resigning her position. The reason agreed for her resignation would be on health grounds. The witness stated the meeting was not intended as a disciplinary meeting.

The witness accepted he was under enormous pressure from HIQUA and he also considered the matter very serious. He wanted to explore a better option for the claimant rather than subjecting

her to a disciplinary process and that was the motivation behind him suggesting she resign her position.

### **Determination**

The Tribunal considered the evidence adduced at both hearings. On the preliminary issue the Tribunal accept the professional medical evidence that she was unable to bring the claim before the 11 July 2011. Based on that evidence the Tribunal find sufficient circumstances existed to warrant an extension of time and therefore extend the statutory time limit allowing the claimant to bring her claim.

The Tribunal noted the Garda vetting process introduced in 2009 was poorly communicated to employees. The claimant had no prior knowledge of the consequences of completing the Garda vetting form. A further lack of clarity on the part of the respondent existed as to the purpose of each of the meetings held with the claimant. The respondent in putting forward a suggestion of resigning from her position was tantamount to a dismissal. In those circumstances the Tribunal finds that the claimant was unfairly dismissed and award her compensation in the sum of €9000 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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