

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

,

CASE NO.
UD2350/2011
TE304/2011
PW522/2011

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 PAYMENT OF WAGES ACT, 1991 TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr E. Harrington

Members: Mr P. Casey
Mr D. McEvoy

heard this appeal at Cork on 26th June 2013

Representation:

Appellant:

Respondent

This case came before the Tribunal by way of an employee appealing the recommendation of a Rights Commissioner refs: (r-100881-ud-10/JOC), (r-100884-pw-10/JOC) and (r-100883-te-10/JOC) .

At the outset of the hearing the appellant's representative withdrew her claim under the Payment of Wages Act, 1991.

Respondent's Case:

The Tribunal heard evidence from JK, director of the respondent company. The respondent makes and provides sandwiches to large stores. Preparation is done during the day and a night shift makes the product for consumption the following day. JK told the Tribunal that the appellant was an intelligent and capable girl and he promoted her to supervisor, hoping to get her onside, but sometimes she caused problems. She already had a verbal and a written warning on her file. Her written warning, dated October 2009, was for being absent without leave.

The appellant was the night shift supervisor. Sunday nights was the busiest of the week (twice normal production) and nobody was allowed to take a Sunday night off unless it was by prior arrangement or annual leave. JK called to the premises on Sunday evening 4th July. He was told by one of the girls that the appellant wasn't coming in, she had arranged for T to cover instead. He contacted her immediately and said "no way was she allowed the night off", to cancel T and come in to work. The appellant text back to say she was in Dingle with her friends but did show up an hour and a half later. JK felt it was complete disregard for him and the rules of the business. She undermined him and the position she held. T had not been sent home so he paid both of them for working that night.

JK called a meeting with the appellant on 14th July and was told she could bring a colleague. She didn't take anyone to the meeting and didn't take it seriously. He gave her every opportunity to apologise but she didn't. The answer to many of his questions was "yeah". He felt he had no option but to dismiss her and generated a letter to that effect.

Appellant's case:

The appellant told the Tribunal that she had no contract of employment and no grievance procedure was in place. She was supervisor and sometimes worked 11 or maybe 13 nights in a row to cover everything. 5 people were always required on a Sunday night when it was busy. This particular Sunday night was not so busy, 3 people could cover it so the others agreed she could take the night off. She had been working Sunday nights for four years except for annual leave of exam time.

She considered the meeting official and thought maybe she would be fired. She didn't see any difference in her and T doing the work but wasn't surprised by her letter of dismissal.

Determination:

- A The Tribunal noted the conflict of evidence regarding the precise terms of employment and any requirements regarding Sunday working. The Claimant maintained that the requirement to work Sunday nights was a general requirement only, in that it only applied if all staff were needed for duty. This was disputed by the Managing Director of the Respondent.
- B The Tribunal noted the absence of (a) written contract, (b) any written evidence of terms of employment or (c) any written disciplinary or grievance procedure.
- C The Tribunal also noted that the letter to the Claimant requesting her to attend the meeting on 14th July, which ultimately led to the decision to dismiss, contained no prior information concerning the purposes of the meeting, nor did it mention that disciplinary action, including dismissal, might be taken.
- D The Tribunal noted that the written record of the meeting did not disclose any warning having been given at the meeting to the effect that dismissal was a possibility. The
Managing Director of the Respondent gave evidence to the Tribunal that he was confident he had told the Claimant that this was a possibility.
- E The Tribunal finds that the dismissal was unfair, noting that there was a lack of clarity regarding the Claimant's contractual duties, which could have been avoided by a

written document. The Managing Director of the Respondent had been frustrated by the conduct of the Claimant for a period of time but did not consider more appropriate sanctions, such as demotion.

- F However, the Claimant's own conduct was not faultless. The explanation offered by the Claimant for her decision not to schedule herself to work on the Sunday night was not fully satisfactory in that it was not supported by any corroborating evidence nor by the timesheets. Moreover, the Tribunal was not satisfied by the explanation given by the Claimant for the time taken by her to reach her place of work, which could not be reconciled with what she had told the Managing Director on the evening in question.
- G Having carefully considered the evidence adduced by both parties at the hearing the Tribunal finds that the appellant was unfairly dismissed within the definition of the Unfair Dismissals Acts but the Tribunal has to take into account the level of contribution that the appellant made to her dismissal.
- H The Tribunal finds that the appellant contributed highly to her own loss and therefore upsets the decision of the Rights Commissioner and awards the appellant the sum of €3,000.00 under the Unfair Dismissals Acts 1977 to 2007 and further awards €1,800.00 to the appellant under the Terms of Employment (Information) Act 1994 and 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)