

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
Employee

CASE NO.  
UD657/2008  
WT276/2008

against  
Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. O'Connor  
Members: Mr. M. Forde  
              Mr K. O'Connor

heard this claim at Tralee on 9th February 2009

Representation:

Claimant: In person

Respondent: Mr. John Galvin Solicitor, Galvin Broderick,  
Solicitors, 16 Ashe Street, Tralee, Co. Kerry

The case before the Tribunal is one of constructive dismissal. The claimant worked as a shop attendant in a petrol station shop, which were the respondent's premises.

**Claimant's case:**

The Tribunal heard evidence from the claimant. She explained that problems began when she started working full time for the respondent. She had been working full time. The issues she had with her employer were fundamental issues. They were to do with her break times, her pay, her hours and her holiday pay. She questioned how she was being treated and how things were done. She was owed holiday pay from the time she had worked part time and this was an issue up until the time she left her employment.

She had heard of a complaint about her behaviour allegedly on 15<sup>th</sup> November, which she asked about but never found out what that was. Then after 19<sup>th</sup> April 2007, when a robbery had occurred in the shop, the major problem began.

At the time of the robbery she was working in the shop on the delicatessen area. She did help out on the till when it was not busy, but at no time was she a manager so she did not see why she had to do the duties of a manager.

The problem that was highlighted later was that a new employee was on the till and the new employee had left too much money in the till, that is they had not put money into the safe chute.

The claimant explained that she was on the deli and would not know how much money was in the till. She was essentially being held responsible for something that she did not know about and on more than one occasion she was blamed for the situation (that too much money was left in the till). She was also threatened that she would have to repay the monies that were stolen. She told the owners that she could not be in two places at once.

The claimant explained that it might not have occurred if there had been a manager supervising the new employee. When she herself was on the till she always had balanced her money at the end of her shift. Her difficulty with the situation was that she was not on the till and yet she was being blamed for the error. Also the owners other issues: that she served customers after hours. She did not understand that the owner and his son would say this, as her money would not have balanced. Also that she would not give customer cigarettes and let them pay later if her till was closed for the night. She would not tell the customers in an ill-mannered way that that she would not serve them if it were after hours. Also if the customers were regulars they would know what time they closed at.

Another main point of contention the claimant had was about her being sick. She had gastroenteritis and had a medical certificate to say this. She did try to contact the owner or manager on duty that she would not be in. She left a voice message. She was concerned about the other workers therefore she would give a warning that she would not be in. She did not know what point the employer was making about holidays; She took holidays as her sister was visiting from abroad.

Regarding the 26<sup>th</sup> she thought that her employer probably implied that that she had been out the night previously drinking but she was not late for work and did not smell of alcohol therefore that was unfair of the respondent. She arrived to work on 26<sup>th</sup> and the owner and his wife called her into the office. He began shouting at her and he was angry. Then his wife started shouting at her and his wife was extremely abusive and lost control. His wife accused her of drinking. Their son was walking by as this was happening and did not do anything. Their son was the manager and he did nothing therefore she had no recourse to deal with the situation. She was angry but did not “go berserk” as they had accused her in the letter. She had turned up for work whilst still being ill to sort out the situation.

She then walked out of the shop and the owner’s wife was still yelling. She was told to stop because it was a public place.

The Tribunal asked the claimant what was the main reason for her leaving. She replied that there was a change in they way that they treated her, they were “snappy” and they kept bringing up the money and “It started to go downhill, I was not being talked to with respect”.

**Respondent’s case:**

The Tribunal heard evidence from the owner. He explained that there are always two girls in the shop and one “guy” on the pumps. The guy on the pumps brings money to the girls on the tills. There are two tills and on number one till the girl would look after that till on her own. On number two till the girl was part time on the delicatessen. From 2.00 pm there were very few customers that called to the deli.

They always warned the girls to only have a few hundred euros in the tills. They also told them that if there was a robbery they were to give over the till money fast then press the alarm.

There was a robbery and the Gardaí investigated it and it passed and was over. He was angry

because of the amount in the till.

One day he got a call from his son to say that the claimant had not turned up for work. His son told him that another worker who was in work had called him. His son then tried to get another worker to cover the claimant's shift.

Later on the claimant sent a text message to say that she was ill and would not be in. The text was at 1.45 p.m. The claimant had been on annual leave and was due to return on that on 24<sup>th</sup> May at 2.00p.m. On Saturday 26<sup>th</sup> May the claimant arrived to work for 2.00 p.m. he called the claimant to the office. He told her that she had left them under pressure. The claimant told him that she had been ill. He told her that it was not a problem that she was ill. It was just that she had to let them know.

Then his wife arrived. The claimant said that she was "f\*\*\*\*\* dehydrated, I was f\*\*\*\*\* leaving anyway". His wife said that that was desperate language and said to the claimant to "shut up you stupid b\*\*\*\*\*". He said to the claimant that if she wanted to leave she could leave.

Every second day after that the claimant asked what the position was. She asked "what do I do now". He told her that she could do whatever she wished and that she could stay.

Regarding the customer incidents he had to beg the claimant to give a customer cigarettes (who had not money at the time) and another incident the time was one minute to ten (when she would not serve the customer).

As for the robbery they had not had a cross word with her. He also drove her home the nights that she was working after the robbery.

**Determination:**

Having heard all the evidence the Tribunal makes the following determination. The claimant's case is before the Tribunal as one of constructive dismissal. However the claimant stayed on for a week after the incident and asked the owner on more than one occasion, during that week as to the status of her employment.

The Tribunal are unanimous that the claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

The claimant told the Tribunal that her holiday pay had been paid to her; accordingly, the claim under the Organisation of Working Time Act, 1997, is dismissed.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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