

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
-claimant UD2527/2009

against
EMPLOYER

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. S. Mahon

Members: Mr. P. Pierson
Ms H. Murphy

heard this claim at Carrick-On-Shannon on 18th July 2011

Representation:

Claimant: Mr. Brendan Byrne, Liam Moran & Company, Solicitors,
11 Malahide Road, Swords, Co Dublin

Respondent: No appearance or representation on behalf of

Claimant's Case

The claimant was employed by the Respondent working in the kitchen and went on sick leave from 15th September 2008. The Tribunal was satisfied that the claimant was employed by the respondent company on the date of termination. The claimant accepted that she did not hand in any sick notes but gave evidence that the respondent employer was aware that she was out sick.

The claimant gave evidence that 2 cooks and her supervisor indicated to her that there would always be a job for her. The claimant was out on sick leave for 11 months. In that time the claimant received no correspondence from the respondent employer and in particular received no notification from the employer that her job was in jeopardy.

On or about the 25th of August 2009 the claimant went into the respondent employer and brought with her a letter from her Doctor advising that she was now well enough to resume work. The claimant gave evidence that the respondent immediately notified her that her job was no longer there. It took a number of weeks for the respondent to furnish the claimant with her P45. According to the P45 the date of cessation of her employment was the 17th of September 2009.

The claimant endeavoured to obtain alternative work. She worked for a period of time in

another hotel as a housekeeper. She applied to several other hotels but to date had not obtained employment. The claimant was able to work after the 25th of August 2009 albeit not doing heavy work at that time. The claimant is presently in receipt of Job Seekers benefit.

Determination

There being no evidence from the respondent employer the Tribunal considered the claimant's case. The Tribunal determined that the claimant was employed by the respondent at the time of her dismissal as evidenced by the P45 issued by the respondent. The Tribunal accepted the claimant's evidence that she was dismissed and that the said dismissal was unfair. However, the claimant in her own evidence accepted that she never handed in any sick notes to her employer and also accepted that she was out of work for a period of 11 months without submitting any sick notes. While the respondent was not present to make representations on its behalf the Tribunal is of the view that, in the circumstances of this case and given the claimant's evidence, the claimant was in breach of her own obligations to the respondent to submit sick notes or Certificates from her Doctor such as to entitle her to remain in the employ of the respondent. The claimant gave evidence that she was notified on the 26th of August 2009 that there was no longer any job for her there yet the P45 noted the termination date as being the 17th of September 2009.

The Tribunal find that the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds. The Tribunal in assessing the level of damages to award to the claimant found that she contributed significantly to the circumstances giving rise to the dismissal and have considered her 75% responsible. The sum of €8,190.00 is awarded under the Unfair Dismissals Act 1977 to 2007 equating to effectively 6 months' pay.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)