

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD593/2010

Against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. O'Connor

Members: Mr. G. Andrews
Mr. O. Wills

heard this claim at Tralee on 14th September 2011

Representation:

Claimant: Mr Denis Lane, Citizens Information Centre, 4 Bridge Lane,
Tralee, Co Kerry

Respondent: No representation listed

The determination of the Tribunal was as follows:-

Respondent's Case

CE, manager of the respondent business gave evidence that the claimant had talked of retirement and had stated that she was getting too old to do the job. She complained that her hands were sore and that she was having difficulty turning patients. CE felt sorry for her and on 14th August 2009 she called her to the office and told her she could retire. The claimant asked to work out her notice but CE told her there was no need, she would be paid for it. They would have a night out to mark the occasion.

The claimant said she didn't want a night out "when she was gone she was gone". The claimant also asked if she was being let go from her job, CE told her no, it was just that she was unable to do the job any more.

Under cross examination CE stated that there was nothing she could do to ease the situation for the claimant. Tablet boxes had to be unscrewed etc. and she needed good hands. She understood the

claimant had arthritis.

She was not dismissed in order to give more hours to anybody else and nobody else had been employed.

CE did not ask the claimant if she wanted to leave but assumed she wanted to go.

PE co- owner of business stated that he was flabbergasted that he was at the Tribunal. The claimant was a friend and a great worker. The claimant used to say she was not able for the job anymore, and he was of the assumption she wanted to leave.

Claimant's Case

The claimant gave evidence. She did not remember making any statements about not being able to do her work. She liked working in the nursing home and if she said anything about retiring it was a joke because she was the oldest person working there. She did not have arthritis in her hands.

She only worked on night per week and was not incapable, in fact she felt quite competent.

On the night of 14th August she was called to the office. She asked what was wrong as she didn't remember doing anything. CE told her "this is one of the hardest things I have had to do but your job is gone". She also said the Polish girl wanted the hours as she couldn't live on what she is earning.

The claimant stated that she was upset at the time; she didn't say anything on the night, she has pride and was not going to beg for her job.

Nothing has been seen or heard from the respondent since that night. She felt hard done by and stated that her job was given to a younger nurse. She knew procedures and would have retired if she wanted to.

She got another job and continues to work to this day.

Determination:

The Tribunal finds that the claimant was unfairly dismissed.

The reasons for this finding of the Tribunal are that the respondent's actions were procedurally unfair and profoundly flawed by the very fact that no investigations were made into the woman's health.

Having done no investigation and having no medical evidence the claimant was dismissed on medical grounds.

The claim under the Unfair Dismissals Acts succeeds and in the circumstances the Tribunal awards the claimant €13,400.00 as compensation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

