

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Julianne Comiskey, The Square, Castlepollard, Co
Westmeath

CASE NO.

UD1715/2010
MN1667/2010
WT766/2010

Against

Geraldine Taggart Sports Limited T/A Bruce Betting,
Clonlyon, Kilcock, Co Meath

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr R. Maguire, B.L.

Members: Mr A. O'Mara
Mr N. Dowling

heard this claim at Mullingar on 13th April 2012

Representation:

Claimant: McCartan & Burke, Solicitors, Iceland House, Arran Court,
Smithfield, Dublin 7

Respondent: Ms Suzanne White, Athrú Solutions, Unit K10, Drinan Enterprise Centre,
Swords Enterprise Park, Feltrim Road, Swords, Co Dublin

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant, JC, began work for the respondent as a cashier in March 2005. She advanced in the position and was made manager of one of the branches of the business. At some time in early 2009 she was spoken to by her manager GT about her attitude with customers and also her attitude with staff. She then received what was deemed to be a final written warning dated 25th March 2009 outlining a list of issues that GT had with her work. JC replied to the letter on 3rd April requesting that the warning be withdrawn and requesting a copy of the respondent's disciplinary procedures. GT replied on 28th April refusing to withdraw the warning and raising other concerns. GT again wrote to the claimant on 12th May requesting a reply.

JC consulted her solicitors at this time and they wrote to GT on 21st May requesting details of any allegations made against JC and again requesting that the final written warning be rescinded. The warning was formally withdrawn by GT in a letter dated 16th June.

JC continued to work as normal, largely being ignored by GT until December when a staff night out was arranged. GT rang the claimant to see why one of the employees wasn't invited. JC told GT that it wasn't a staff night out and she couldn't contact the employee as she had changed her number. She stood up for herself and told GT if she had an issue to put it in writing. GT did so on 9th December, giving a verbal warning. The claimant felt that GT was making an issue out of things just to be able to give a warning and requested it be withdrawn.

In January 2010 a new manager was brought into the shop and the claimant was asked to show her how to do everything. Every week after 19th January JC did not appear on the rota for the shop she was manageress in, she only appeared on the rosters of other shops. While she worked at the other locations, at no time did she have managerial status. She felt she had been demoted. JC knew that by standing up to GT she had been moved but didn't complain as she was afraid of losing her job. Things came to a head in May of 2010. She was working the third long day in a row by herself in a shop that had no facilities and where she had no breaks. She made a mistake with a transaction and admitted that it was her error. She rang to explain what had happened and GT lost it with her. She told her the money would be taken from her wages and another written warning would be on the way. JC broke down, telephoned her mother, told the shop to get cover and left. She went to see her doctor and never went back to work for GT.

Under cross examination the claimant admitted that she had a pre-existing history of depression that had become aggravated by all the problems she was experiencing at work. She had not made her employer aware of it. GT was not approachable and there was nobody else to turn to as she was the boss.

Respondent's case

GT owner/manager of the business stated that turnover in the shops was down by 60%. There were on-going problems with the claimant JC and everybody was bearing the brunt of it, she was moody and would upset other members of staff and make them cry. Customers were leaving and going to other shops. She had numerous meetings with JC and told her they were warnings but afterwards life would then become miserable for everybody. She did put a final written warning to JC but withdrew it after she received a letter from the claimant's solicitor. Only then did the respondent put contracts and grievance procedures in place.

Regarding the night out everybody went except one girl, the staff were upset about it and GT sent a text message to the claimant enquiring why this girl was not invited. JC telephoned GT and screamed down the phone at her. GT had no option but to hang up. The next day JC behaved as if nothing had happened. GT questioned her about her behaviour and was told that outside of working hours JC would speak anyway she wanted to.

On the day of the final incident 17th June, JC gave a customer a €500 credit bet, this was totally against well-known procedures and was considered gross misconduct. JC telephoned to report the incident and GT told her that a disciplinary meeting would have to take place and that the money may be deducted from her wages. JC said she was leaving, never coming back and hung up. Another member of staff received a telephone call from the claimant's mother and the claimant was asked to stay until cover was found. GT tried to contact her again by phone and text but did not get any reply, the matter was never properly discussed.

The following week a sick certificate arrived and GT said she didn't need it as JC had left. GT didn't hear anything further so sent a P45 and any wages due to the claimant. Sometime after that GT received a solicitor's letter. Salary reductions had been put in place and staff were already working reduced hours. Breaks were decided between employees and when staff were told that they had to take breaks the claimant would storm out and then not speak when she returned, this was because staff got paid time and a half when they worked more than 40 hours and breaks were reducing their working time. There was no availability for breaks in one shop as it was only operated by one person but the claimant had only worked in it for 4 days.

Under cross examination GT said that the day the claimant left she was working a 10am to 9.30pm shift. She did not realise that she had to give verbal warnings in a written formant so did not have copies of same. There were no policies and procedures in place at the time of the first written warning. GT said that the claimant had not been demoted, she was on the same wage and she wanted to keep an eye on how she was treating customers and staff. The number one golden rule was not to allow credit betting and that was what the claimant had done. GT had tried to contact her after the events on 17th June but was unable to do so, she said she wanted to know if the claimant was definitely leaving. GT felt that the claimant may not have used the grievance procedure as it would still end up with her.

Dissenting opinion from Mr. O'Mara:

'In the context of the significant issue that arose regarding the performance of the claimant on her last day at work i.e. non adherence by the claimant in the requirement to ensure that the Company were in receipt of a bet payment (€500) from a customer; in these circumstances the claimant should have participated fully in any associated company disciplinary process and/or utilised the company grievance procedure as necessary. I believe the claimant's behaviour precipitate in this matter, in leaving her employment in these circumstances and therefore do not support the reasonableness of the claimant's subsequent claim for constructive dismissal'.

Determination

The majority of the Tribunal finds that the respondent did not act reasonably and that the claimant was constructively dismissed.

The respondent had not instituted a grievance procedure until after the claimant had been provided with a final warning, though this was subsequently rescinded by the respondent. That procedure itself would have resulted in the claimant complaining to GT, the owner and overall manager of the business.

By the time that the claimant walked away from her job, she had already been moved by GT to a premises where she was working without support so she could not take her statutory breaks or even go to the bathroom without difficulty. The majority of the Tribunal considers that this was a demotion from being manager of a premises in Mullingar with many staff reporting to her. She was expected to work long hours, beyond the statutory maximum. Against that backdrop, when she had a lapse in standards and gave a customer a €500 credit bet, the Tribunal finds that the reaction of GT on the phone was to prejudge the issue and blame the claimant entirely for writing the credit bet, when the claimant was not being given the proper support she was entitled to by law from her employer.

The majority of the Tribunal finds that the claimant's experience with the respondent over her

employment and the reaction of the respondent on the last day of her employment to being told that the claimant had written the credit bet justified the claimant in not invoking the internal grievance procedures. The majority of the Tribunal is satisfied on the evidence that, by virtue of the treatment to which the claimant had been subjected, coupled with the status of the perpetrator of that conduct, the claimant's situation in her employment became intolerable and she was left with no option but to terminate her employment.

The Tribunal awards €10,000 in compensation under the Unfair Dismissals Acts 1977 to 2007.

As this was a case of constructive dismissal it therefore follows that the appeal under the Minimum Notice and Terms of Employment Act, 1973 to 2005, cannot succeed.

No evidence was adduced under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

