

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD699/2006

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Halpin B.L.

Members: Mr. P. Pierson
Mr. S. O'Donnell

heard this claim at Portlaoise on 31 January 2007

Representation:

Claimant:

In person

Respondent:

Ms. Claire Walsh B.L. instructed by Ms. Elaine Dunne,
Rollestons Solicitors, Church Street, Portlaoise, Co. Laois

The determination of the Tribunal was as follows:

This being a claim of constructive dismissal it fell to the claimant to make her case.

The respondent employed the claimant as a qualified stylist in her hairdressing salon, along with three other staff members, from September 2003. The employment was largely uneventful until early 2006 when the claimant did not receive her form P60 for 2005 until 21 March 2006. This caused inconvenience to the claimant in that it delayed the processing of her application for a mortgage. There followed a series of minor incidents between the parties. The claimant felt she was being unfairly treated by the respondent leaving work in the afternoon some two days a week to leave the claimant and another stylist to complete the appointments. Whilst the respondent felt that the claimant had a bad attitude towards her and suspected that the claimant was, on occasion, closing the salon early and refusing bookings, no formal disciplinary measures were taken by the respondent against the claimant.

The respondent was ill during the week ending 26 May 2006 and went home sick on two days. At around 1-45pm on Friday 26 May 2006 when the respondent was still ill and had decided to go home there was an argument between the claimant and the respondent about who was going to do the respondent's appointments and whether a client who telephoned for an appointment could be accommodated. The respondent accepts that she used foul language towards the claimant, for which she later apologised. There is a dispute as to whether the claimant used foul language. The claimant does not accept that the respondent apologised to her immediately after the event. The claimant considered that she should not have to tolerate foul language from the respondent and left the salon. The respondent

felt that the claimant had gone off in a huff and would return when she calmed down. In the event when the claimant returned shortly before the salon closed she affirmed her decision to leave the employment and requested any outstanding monies be paid the next day. These were paid.

Determination:

Having heard all the evidence in this case the Tribunal in reaching its decision has to consider whether the act of leaving the employment was reasonable having regard to all the circumstances. The Tribunal is not satisfied in that regard and finds that the claimant has not met the onus of proof required in a claim of constructive dismissal. Accordingly the claim under the Unfair Dismissals Acts, 1977 To 2001 must fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)