

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee
MN700/2007

UD889/2007

against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr. P. Casey
Mr J. McDonnell

heard this claim at Cork on 15th May 2008

Representation:

Claimant: Ken O' Sullivan B.L., instructed by Murphy English & Co., Solicitors,
33-34 Cook Street, Cork.

Respondent: Sarah Daly B.L. instructed by Barry Turnbull & Co., Solicitors,
33/34 Washington Street West, Co Cork

The determination of the Tribunal was as follows:

Dismissal was in dispute in this case.

Claimant's evidence:

The claimant commenced work as a beautician in the respondent's business in November 2005. She worked forty-five hours a week, often working through lunch-time. The employer spent most of her time in Spain and returned every few months. There was always tension when she was in the salon. The claimant wanted to change to selling cosmetics and had been interviewed for a job with a concession unit in a department store in Cork city. The interviewer told her that they would not approach her employer for a reference without her permission. The claimant did not tell the

employer about the interview because she did not have a job offer. She suspected that one of the other employees had told SR about her interview. Ultimately she was not successful in the second interview for the concession unit job.

On 24 May 2007 the employer came into the salon and told the claimant she wanted a word with her. They went to the kitchen. There, the employer told the claimant she got a call from A concession unit looking for a reference for her and she wanted to know when she had intended telling her she was leaving. The claimant told her that if she got the job she would have given her notice. SR was annoyed and told the claimant that she was sick of doing things for her and to get out of the salon. The claimant understood that she was fired so she got her bag and coat and left. As she was leaving she was crying and told the two members of staff present in the salon that she had been told to get out. The respondent saw her leave but did not come after her. The salon manager called her that night and said it was a disgrace the way she was treated and told her that the respondent had done this to others in the past. The employer had not told her mother in a telephone conversation that she could return to her job in the salon. She would not have left her employment with the respondent without having alternative employment. She got a job with another concession unit and started work on 10 July 2007. She had been out of work for 6.5 weeks. While working with the respondent she earned €405.00 gross per week.

The claimant denied that the respondent had funded a course in nails valued at €1,000 for her. She had never done a course in nails but had training one night a week from another employee. At a meeting on 23 May 2007, the night before her dismissal, the employer had asked the staff if they were interested in extra training in nails. The claimant had told the respondent that she found acrylic nails hard to do because she was left-handed but she was prepared to do more training as a nail technician. She did not feel obliged to tell her employer that she had applied for another job. She denied that the respondent had told her mother that she could come back. Prior to 24 May 2007 she had no problems in her job, and had never received a warning. The claimant's mother was unavailable, due to illness, to give evidence to the Tribunal.

A colleague of the claimant confirmed to the Tribunal that the claimant came out from the meeting with the employer on 24 May crying and told her and another colleague that she had been fired. The employer came into the salon at 6.00pm that evening and did not ask about the whereabouts of the claimant. The respondent was not often in the salon but there was always tension when she was present. The colleague did not return to her job after 24 May 2007 because she was disgusted at how the employer had treated the claimant. The claimant asked her to arrange an interview for her with her new employer but the claimant found alternative employment in the interim. There was a relatively high turnover of staff in the salon and many only stayed for a short time.

Respondent's Case:

The respondent has been in the beauty business for thirty years and has her own salon since 1981. She also has a training college for students alongside the salon. She is a successful businesswoman and gets on well with her staff. She gives and expects loyalty. She "calls a spade a spade". Whilst she has raised her voice at staff when necessary it was a gross exaggeration to say that she intimidates staff and shouts at them all the time. Some staff stay a long time others move on quickly. She never fired anyone in her life.

The respondent called a meeting of her staff on 23 May 2007 because she was concerned about the lack of cover for the nails section of the business and she needed to sort it out. The nail business is huge and has a big spin-off. One nail technician had left and another was to leave shortly. She ran a

nail course (with the help of another staff member) for the claimant to the value of €1,000 for which she normally charged students, but as the claimant was a member of staff, she was not charged. At the meeting on 23 May she asked the claimant if she was she on board and prepared to do nails and she indicated that she was, even though she felt she was not good at nails. The respondent offered to give her further training.

Around midday on 24 May 2007 the respondent got a telephone call from a person asking her to confirm that the claimant worked in her salon. She understood immediately that the caller was looking for a reference for the claimant. The respondent “saw red” and was furious that the claimant was prepared to take further training from her and take the benefit somewhere else. The claimant admitted that she had applied for a job with A concession unit. The respondent “blew the ears off her”, told her to get out of her sight and then left to go to the attached college where students were sitting examinations. She did not intend firing the claimant and having to train in a new person in her place. Due to an illness the respondent had appointed a manager in the salon and taken a year off from the business, for the first time in her career. Another staff member told her that the claimant had taken her bag and coat and left. The claimant’s mother telephoned the respondent some hours later and told her the claimant was very upset and crying and accused the respondent of firing her. The respondent told her that she had not fired her and that her job was still there for her. She came back from Spain about once a month to visit the salon. She ran a tight ship but disputed the statements that tension abounded when she was in the salon. She had given a one-to-one course in nails to the claimant. She agreed that the claimant was entitled to look for another job but she felt let down by the claimant who had assured her the previous evening that she was committed to the salon. She told the claimant to get out of her sight and denied telling her to get out of the salon. The summer is the busiest time of the year in the beauty business and it should not have taken the claimant 6.5 weeks to find an alternative job. Many students are leaving college at this time and the manager receives lots of calls from employers seeking to employ beauticians.

When the Manager of the salon asked the respondent on 24 May where the claimant was, the respondent told her that she had gone. The Manager telephoned the claimant that night and as regards what had happened in the salon told the claimant that it was one person’s word against another. No one had been fired in all her time in the salon. The employer did get annoyed sometimes and blew hot and cold but she (the manager) but did not have a problem with her and had worked for her for eight years. The respondent was not intimidating and during the year and a half that the claimant worked there she had spoken to the respondent about personal matters. The Manager confirmed that it would not be difficult to get a job in a beauty salon, especially in the summer, and with the claimant’s experience, but agreed in cross-examination that she was in a better position to know of jobs because prospective employers, aware that students were finishing their course in the college, were telephoning her about candidates for jobs. She did not believe that the claimant had made anything up.

Determination:

There was a conflict of evidence as to the words uttered by the respondent to the claimant at their meeting on 24 May 2007. The respondent admitted that she was annoyed with the claimant at that meeting because of her failure to inform her at the meeting on the previous evening that she had been for an interview. On the balance of probabilities the Tribunal accepts the claimant’s version of what was said at the meeting and finds that it was reasonable for her to understand from the words “Get out of my salon” that she was dismissed. The Tribunal finds support for its conclusion from the evidence that, whilst the respondent was aware that the claimant had left the salon, she took no steps to contact her and resolve any misunderstanding that may have arisen between them. The

Tribunal accepts that the claimant was not aware that her job was still available for her. As there were no grounds justifying the dismissal, the claim under the Unfair Dismissals Acts, 1977 to 2001, succeeds.

The Tribunal, noting that the claimant chose to pursue a somewhat different career path after the dismissal, accepts to some extent the respondent's arguments that this delayed her return to the workforce. Having made a small deduction for this contribution towards her dismissal, the Tribunal awards the claimant €2,000.00 under the Unfair Dismissals Acts, 1977 to 2001.

In addition it awards her €405.00 (being the equivalent of one week's gross pay) under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

