

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.

UD264/2008
MN546/2008

against
Employer

under

**Minimum Notice and Terms of Employment Acts, 1973 to 2001
Unfair Dismissals Acts, 1977to 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr W. Power
Ms M. Maher

heard this claim at Dublin on 6th June 2008

Representation:

Claimant(s) :

Ms. Susan Jones BL instructed by Mr. Mark Quinn, Molloy Murphy, Solicitors, 9 Ashleigh
Centre, Castleknock, Dublin 15.

Respondent(s) :

In Person

The determination of the Tribunal was as follows:-

Preliminary Point

The claimant's representative made an application to add a claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 in this case. The respondent had no objection to this application being made and agreed to the inclusion of the claim.

Respondent's Case.

The first witness for the respondent gave evidence that she was a joint owner of the hairdressing business when the claimant was employed there. She gave evidence that the claimant started work in the business on the 25th November 2006.

The claimant went on maternity leave in August 2007. While she was on maternity leave the respondents cousin offered to help in the salon. The witness accepted this offer and stated that her cousin was not receiving any payment while working in the salon.

The witness gave further evidence that she had suffered from a serious illness that necessitated hospitalisation. She returned to work during her illness and worked without pay in the business. She was contacted by the claimant in January 2008 and the claimant was seeking to return to work when her maternity leave had expired. She informed the claimant that the salon had experienced a downturn in business and was now in financial difficulty. As a result of this downturn she could not offer the claimant her old job back. The salon closed down in March 2008 and re-opened 2 weeks later under new management. In reply to questioning she confirmed that her former landlord to whom she was paying rent is the current owner of the new salon and she is an employee.

Under cross-examination the witness stated that she originally had planned to keep the claimant in employment for 4 years. She confirmed that the claimant had never been given a contract of employment. She agreed that the new salon had the same customers as the old salon

The second witness for the respondent gave evidence that he was the landlord and had sublet the premises to the first witness and her former business partner. He gave them one months notice informing them to vacate the premises as he was not renewing the lease. He did this and re-opened the premises under a new name two weeks later.

Claimant's Case:

The claimant gave evidence that she worked for the respondent since November 2006 as a trainee hairdresser and was earning €240 per week. She went on maternity leave in July 2007. Prior to her departure on maternity leave she confirmed with one of the partners in the salon that she would be returning to work when her maternity leave had expired. The partner indicated she had no difficulty in this regard.

While the claimant was on maternity leave she called to the salon and saw a cousin of one the partners working there. She overheard this girl asking for her wages while she was in the salon. Approximately three weeks prior to her due date for return to work the claimant contacted her employer and explained that she would be unable to return to work on a full time basis for a short period of time as she was having difficulty acquiring a full time baby minder. She assured her employer that once she had a full time baby minder in place she would return full time.

A short time later she received a phone call from the first witness for the respondent informing her that her job was no longer available to her as the salon was in financial difficulty and the respondent was not in a position to offer her employment.

The claimant gave further evidence that her former employer's cousin is currently working in the new salon. The claimant has been unemployed since the 19th January 2008 and has made several unsuccessful efforts to secure employment in the intervening period.

Determination:

Having carefully considered all the evidence the Tribunal is satisfied that the claimant was unfairly dismissed and awards the claimant the sum of €4560.00 under the Unfair Dismissal Acts 1977 to 2001. The Tribunal also awards the claimant the sum €240.00 being the equivalent of one weekspay under the Minimum Notice and Terms of Employment Acts 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

