

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM(S) OF:**

Employee

against

Employer

under

**CASE NO.**

UD1162/2007

MN899/2007

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

I certify that the Tribunal  
(Division of Tribunal)

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

Members: Ms. M. Sweeney  
Mr. J. McDonnell

heard this claim at Waterford on 11th September 2008

**Representation:**

Claimant(s): Mr. Sean Kelly, Unite The Union, 39 O'Connell Street, Dungarvan, Co.  
Waterford

Respondent(s): In person

The determination of the Tribunal was as follows:-

Dismissal was in dispute.

**Claimant's case:**

The claimant worked for the respondent from 1997 until her dismissal in June 2007, a period of ten years. She worked on Wednesdays and Saturdays. On Wednesdays, she worked alone in the shop and liked this. She kept an account of the Wednesday takings in a notebook and having made deductions for her pay, holidays and the cost of a daily newspaper, she left the remainder of the takings under a towel in the shop for the respondent. Sometimes the respondent called to the shop on Wednesday evenings and collected the day's takings and if business had been good on the day, he gave her an extra payment. During the times when the respondent was on holidays in Australia, she lodged the Wednesday takings to his credit union account.

When the claimant commenced employment with the respondent in 1997, a PRSI stamp was not required for part-time employees but this changed in 1999. From then on, she regularly mentioned

the PRSI stamp to the respondent but he told her not to worry about it and that his wife would sort it out. A PRSI stamp would have entitled her to make certain claims and to sign on for the dole on the days that she was not working. While the claimant had a good working relationship with the respondent, his continuing failure to do anything about her PRSI stamp bugged her. On a number of occasions that she mentioned the PRSI stamp to him, he told her to put up a self-employed stamp or shut up and/or he would say, "Not that again". However, she believed that he would eventually sort it out.

In late 2006, about seven months before her dismissal, the claimant told the respondent that it had been going on long enough and that if it was not sorted by 10 June 2007, she would report the matter to Social Welfare. The respondent promised to sort it out on his return from his holiday in Australia but he did not do so and when she continued to mention it to him, he accused her of bullying him on a number of occasions. On 25 May 2007, the claimant wrote to the respondent referring to her attempts to get him to pay her PRSI stamps and reiterating that if he did not sort the matter by 10 June, she would have to sort it out herself. (A copy of this letter was opened to the Tribunal.)

When the claimant raised the issue of PRSI stamps with the respondent on Saturday 16 June 2007, he reacted angrily saying, "Not that again." and told her that she had never worked for him and that he would rather go to court and gaol than pay €1 PRSI and that she had worked for herself and not for him. The respondent then proceeded to put €50.00 in a jar near the cash box, told her that it was for her self-employed stamp and that she was to take money from the till to pay for the stamp in the future. Putting the €50.00 in the jar to pay for a self-employed stamp was the difference between this and the other occasions on which she had raised the issue with the respondent and it made her realise that he was not going to pay her PRSI stamps to which she was entitled under law. She had been the respondent's employee and she felt that she was being dismissed. In cross-examination the claimant denied that she only began asking about her PRSI stamp from April 2007.

On the following Monday, the claimant went to the Social Welfare office and reported the respondent's failure to provide her with her PRSI stamps. The claimant found it very hard to report the matter to Social Welfare. She was feeling sick afterwards and went home to bed rather than return to work. That evening she informed the respondent that she had reported the matter to Social Welfare; she felt that it was only fair to tell him.

On the evening of Tuesday, 19 June when passing the barber shop, the claimant saw a notice on the door, which read: "Closed Wednesday, please call back". Such a sign had never been placed on the door during her previous nine and a half years with the respondent. She telephoned the respondent, enquired as to the meaning of the sign and asked if he was letting her go. The respondent told her that she had never worked for him and that since a criminal investigation was ongoing, she was no longer welcome inside his door. The claimant had been hoping that the respondent would invite her back to work but he did not and three weeks later, she saw another person working in the shop in her job.

Subsequent to the claimant's dismissal, a Social Welfare officer met with the respondent. The officer advised the respondent that the claimant was his employee. The respondent then accepted that she was his employee. He retrospectively paid her PRSI stamps for her entire period of her employment with him.

The claimant commenced new employment in January 2008 but three weeks later was involved in a car accident, which left her severely injured. She had not claimed disability allowance. However, following her dismissal, she received carer's allowance for caring for two family members for a few

hours each day. Because she did not have a PRSI stamp, she had to be means-tested for this allowance.

### **Respondent's case**

The respondent hired the claimant to work for him on Saturdays only. He allowed her to open the shop herself on Wednesdays but very little was made on those days. He agreed however that he took whatever remained from the Wednesday takings after the claimant had taken her wage for the day. He also accepted that she was employed on Wednesdays as well as Saturdays.

When the claimant had commenced employment with him, the issue of the payment of PRSI stamps had not been discussed. Though not exactly sure as to when the PRSI issue was first raised by the claimant, he maintained that it had not been going on for a long time but that it could have been first raised at the end of 2006. His reaction to the claimant's request for a PRSI stamp was to say that the claimant was "self-employed". He kept putting the issue on the long finger. He denied that he had ever told the claimant to "shut-up" when she had asked about PRSI. The respondent's wife, who did the books for him, told the Tribunal that in April 2007, the respondent asked her to look into a PRSI stamp for the claimant.

The respondent was nervous about the PRSI issue as he had heard of people losing their houses to the Inland Revenue. He confirmed that he had left €50.00 in a jar on Saturday, 16 June, and told the claimant that as long as he was able, a job would exist for both of them in the shop. They had sat down and discussed the situation. He considered that it would be the claimant's responsibility to take care of her PRSI stamp with this money and he had hoped that the PRSI stamps would only be required from that Saturday, going forward. He might have told the claimant on that Saturday evening that the €50.00 was a fund for a PRSI stamp for "self-employed or whatever". However, during a Social Welfare inspection, he had been told that legally, he had been her employer and as such, he was legally responsible for the payment of all of her PRSI stamps since the commencement of her employment. He accepted this and paid the contributions in full. He denied that he had dismissed the claimant or wished to do so. Due to the condition of his health, he had wanted her in the shop.

On Monday, 18 June, the claimant told him that she had reported him to Social Welfare. On 19 June, he put a sign on the shop door to say the shop was closed on Wednesday and asking customers to call back. He knew that the claimant's father was ill and if she came into work on the Wednesday, she could take the sign down. Such a sign was always put up when the claimant was on holidays. The claimant had missed a number of Saturdays because her father was ill.

The claimant had hung-up the telephone on him during their conversation on Tuesday, 19 June 2007. He had intended reviewing the Wednesday openings with her and had wanted her to work on Saturdays. The claimant did not show for work on the following Saturday. He had sensed some difference in the claimant around that time and that she had not been as happy as she had previously been. The telephone conversation on the Tuesday night had been their last contact. The claimant's keys to the shop were dropped back a few days later. When the claimant did not return to work, the respondent decided to open the shop on Thursdays to Saturdays only, and to close early on Saturdays.

The respondent denied that he had told the claimant that she was not welcome in his shop during their telephone conversation. He also denied saying to the claimant that she had never worked for him but admitted that he might have said that she was working for herself.

The respondent was upset when the claimant left his employment. She had been a good worker whom he could not fault in any way; they got on well together and covered for one another. He thought that she had left because she has wanted a change and she had a lot of commitments. He confirmed that the shop is now closed on Wednesdays.

During their telephone conversation on the Tuesday night, when he had asked the claimant about the criminal investigation of Social Welfare and if she wanted to take on the shop herself, she had hung-up. That telephone conversation lasted a minute or more. The claimant had asked him if he wanted her to work and he had replied by asking her if she would take on the shop herself and then she had hung-up.

**Determination:**

Dismissal was in dispute in this case.

While the respondent initially disputed that the claimant was his employee, he eventually accepted that she was. The Tribunal accepts that for at least one year before June 2007, the claimant had been asking the respondent to pay her PRSI stamps but despite his promises and the ultimatum she issued to him, he failed to pay it. Matters came to a head on 16 June 2007 when she again had to raise the issue with him and he made clear to her that he would not pay her employee PRSI stamps but put money aside for a self-employed stamp. The Tribunal finds that it was reasonable for the claimant to understand from this response that he was denying her status as an employee and that accordingly she was no longer employed by him and was dismissed. This was further confirmed to her during their telephone conversation on the evening of Tuesday, 19 June when the respondent told her that she had never worked for him and that she was not welcome inside his door. The claim under the Unfair Dismissals Acts, 1977 to 2001 succeeds and the Tribunal awards the claimant €1,950.00 under the Acts.

The claimant is entitled to four weeks' pay in lieu of notice. Based on the figures supplied to the Department of Social Welfare, the claimant earned €90.00 per week for her two-day's work. Accordingly, the Tribunal awards the claimant €360.00 under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)