

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

EMPLOYEE - **claimant**

UD51/2009

MN53/2009

RP35/2009

against

EMPLOYER – **respondent**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

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

Members: Mr. M. Forde  
Mr. J. McDonnell

heard these claims at Killarney on 15 September 2009

**Representation:**

Claimant: Ms. Noreen Broderick, Galvin Broderick Solicitors,  
16 Ashe Street, Tralee, Co. Kerry

Respondent: Ms. Maura E Hennessy, Maura E Hennessy & Co. Solicitors,  
12 Edward Street, Tralee, Co. Kerry

The determination of the Tribunal was as follows:

Dismissal being in dispute between the parties it fell to the claimant to prove the fact of dismissal.

The claimant was employed as a sales assistant in the respondent's lighting and interior furnishing business from 9 January 2006. The employment was uneventful until around 9-30am on 15 October 2008 when the managing director (MD) called the claimant to a meeting, the events of which are in dispute between the parties. The claimant's position is that MD told the claimant "I'm going to have to let you go because things are quiet". When she asked if anything could be done MD replied, "Well I could offer a pay cut but there is no point as there is no work". MD told the claimant that she could work her two weeks' notice, despite the claimant being due to go on annual leave for the second of those weeks. The respondent's position is that he told the claimant that "because the business is quiet there will have to be pay cuts". The claimant then lost her temper and told MD that she "had too many debts .....could get another job at this time of year and I'm going and giving you

two weeks' notice".

MD spoke to the claimant's colleague (CC) later the same morning and his position is that CC initially accepted that she was to take a pay cut but, after she spoke to the claimant, changed her mind. It is common case that CC left the employment on the morning of 15 October 2008 after speaking to the claimant. CC, having moved to a different continent, was not available to give evidence to the Tribunal.

It is common case that, following a request from the claimant, on 16 October 2008, MD gave the claimant two letters. A reference and a second letter which stated "Due to the present economic downturn and the fact that there is no longer any work available to be carried out in the claimant's position, this company regrettably, at the present time, can no longer employ her".

The respondent placed an advertisement for sales assistants in a local newspaper published on 16 October 2008. This upset the claimant and the situation in the shop between the claimant and MD was described as sullen. She worked up to and including Friday 17 October 2008 but then submitted a medical certificate for Saturday 18 October 2008 and did not return to work thereafter. The respondent paid the claimant the balance of her notice period.

In the event the respondent employed no new staff as a result of the advertisement. MD's wife and daughters began to work in the business instead. There are no fewer employees in the business now than before 15 October 2008.

### **Determination**

Where dismissal is in dispute between the parties the onus of proof is on the claimant to prove the fact of dismissal. Having given detailed consideration to both versions of the events of the meeting between MD and the claimant on 15 October 2008 the Tribunal, on the balance of probability, accepts the respondent's version of events. Accordingly, the Tribunal finds that the claimant tendered her resignation at the meeting on 15 October 2008 and that there was no dismissal. In such circumstances claims under the Unfair Dismissals Acts, 1977 to 2007, the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Redundancy Payments Acts, 1967 to 2007 do not arise.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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