

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

- **claimant**

UD1511/2008

against

EMPLOYER

- **respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Mr J. Killian
Mr K. O'Connor

heard this claim at Cork on 29th July 2009

Representation:

Claimant :

Fachtna O'Driscoll, Solicitors, 8 South Bank, Crosses
Green, Cork

Respondent :

Mr Barry Humphries, Liquidator

The determination of the Tribunal was as follows:-

A Liquidator was appointed to the above company on 24th July 2009

Claimant's case:

The claimant in her evidence told the Tribunal that she was employed as a senior sales person from 2001 to 2008. She commenced her employment in the Douglas store on 5th June 2001 and the business transferred to a city location in 2006. When she started working she was very happy in her job and loved dealing with people. She was the senior member of staff and had vast experience. She became friendly with most of the clients and was responsible for 60% of the

sales. The respondent could depend on her and the claimant was very loyal to her. In early June 2008 the claimant noticed a change in the respondent in that she became “horrible” towards her. Up to this time she always had the utmost of respect for the respondent and gave her 110%. The respondent cut the claimant out of the daily running of the business, would not say hello to the claimant and would pass remarks such as she was not to fold her arms. The claimant felt that she was trying to get rid of her. One day a customer came in and the respondent threw new stock down the stairs at the claimant. The claimant was upset both for herself and the customer.

She felt the respondent would like to be able to say the claimant was not happy and should leave but she did not allow the respondent to provoke her. JC was a full time member of staff and LO’N had been full time but she transferred to another business being run by the respondent. One other employee was there a few months and another two years. One of these employees went on holidays from the end of July to 5th August 2008 and during that time the respondent enquired as to when the claimant was taking her next weeks holidays and her response was when the other girl would return. The claimant’s father-in-law had died in or around 6th August and the respondent phoned the claimant on 11th August, at 2pm, asking to meet her in a local pub at 2.30pm.

The claimant felt she was being bullied. The respondent’s husband was also present although he was not active in running the business. The claimant was told she was being made redundant and her response was that she loved her work and there was no reason to make her redundant. The claimant felt she could be earning €20/30 more than the other employees. The respondent’s husband felt the claimant was being selfish and her response was that her livelihood was being taken away and that she had always worked in fashion. There was no suggestion of reducing her hours and she would have been happy to work part-time. The comment from the respondent’s husband was that the claimant was getting aggressive.

The claimant rang her husband and told him she was being made redundant and he said there had to be other options and there were procedures to be followed. The claimant was on holidays and she left the building. A few days later she received a letter from the accountant dated 12th August 2008 together with notice of redundancy and the claimant would not sign this form as her title was marked as manageress. The claimant was never the manager, she had no contract to say she was manager and was not paid as a manager. Occasionally she would ask for a salary raise and the respondent would comment that she, the claimant, was not the manager. She was never formally appointed manager when they moved to the city premises. When she went to the accountant’s office she said she was not happy to sign the redundancy form since the title of manager was not correct, however she eventually signed the form under protest in order to get paid her redundancy lump sum. She was not required to work her notice and was paid in lieu.

The claimant told the Tribunal of her efforts to secure alternative employment. She confirmed that she had been paid €9,324 statutory redundancy.

Respondent’s case:

The respondent being in Liquidation and represented by the Liquidator who was not in a position to call evidence on behalf of the respondent, no evidence was adduced in that regard.

Determination:

The claimant was unfairly dismissed by virtue of unfair selection for redundancy. The Tribunal in all the circumstances award the claimant the sum of €10,577 under the Unfair Dismissals Acts, 1977 to 2007. In calculating this award the Tribunal has taken into account the redundancy

payment of €9,324 already paid to the claimant.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

