

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE *-claimant*

Against

EMPLOYER *-respondent*

Under

CASE NO.

UD1339/2009

RP1514/2009

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. Lucey

Members: Mr. P. Casey  
Mr D. Mc Evoy

heard this claim at Cork on 29th June 2010

#### **Representation:**

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Claimant: Mr. David McCoy, Conway Kelleher Tobin, Solicitors, 29 South Mall, Cork

Respondent: In Person

The determination of the Tribunal was as follows:-

The appeal under the Redundancy Payments Acts, 1967 to 2007 was withdrawn at the outset of the hearing.

#### **Respondent's Case**

The claimant was employed from October 2005 until December 2008 initially as a part-time bookkeeper and within a couple of weeks as a sales assistant. The working relationship was good except for issues around the claimant's availability to work and work rotas.

In December 2008 goods left the store and were delivered to the claimant's house without being paid for. On discovery of this the respondent felt that they could no longer trust the claimant and had to dismiss her. The delivery docket for goods worth €569.00 was submitted to the Tribunal. The delivery docket had a handwritten note saying 'c/o (respondent's wife)' but the respondent and his wife was unaware that this delivery was taking place.

### *Cross-Examination*

There was no contract of employment in place. The claimant worked the days that her husband was not working, on occasion the claimant gave short notice of her availability to work. The claimant normally worked 2 days per week but could work up to 5 days per week if the respondent was on holidays. Towards the end of the claimant's employment business was slow as a result there was not as much work for the claimant. The respondent 'had to look after the full-timers.' The respondent has made numerous redundancies since December 2008.

On the 29<sup>th</sup> of December the respondent's wife gave the claimant notice that her employment was being terminated over the phone. The respondent did not mention the breach of trust or the issue of goods leaving the shop during that telephone call. The reference given to the claimant by the respondent on the 9<sup>th</sup> of January stating that she was an, 'honest and a valuable employee' was given in good spirit so the claimant could get another job. The respondent issued a second reference on the 30<sup>th</sup> of January retracting the positive reference with a negative one. The claimant did phone the respondent on the 19<sup>th</sup> of January inquiring about a letter regarding her redundancy for Social Welfare. The respondent accepts that the claimant is entitled to fair procedures but his 'business comes first.' The respondent did not engage in a disciplinary process. The respondent acknowledges that if the claimant had known her employment was in jeopardy she would have accommodated the respondent with her working hours.

The respondent did not give any written notice of termination to the claimant. The staff have the option to purchase goods from the shop and pay the balance gradually.

### **Claimant's Case**

It was common practice within the respondent to purchase goods from the shop and pay it off gradually. The claimant had purchased many items in the past without a problem. The claimant normally requested the price of the item from the respondent in order to obtain a discount price and then purchased it. The claimant's availability for work has never been an issue for the respondent as her husband's shift roster was compiled on a yearly basis and the claimant submitted a copy to the respondent each year, which was kept behind the checkout.

In the summer of 2008 the claimant started receiving phone calls from the respondent the day before she was due to work telling her there was no work available. The claimant's hours were gradually reduced and given to the full-time staff.

The respondent's wife rang the claimant on the 29<sup>th</sup> of December informing her that she had to let her go as there 'were no hours available' for her. The respondent did not mention being 'fired.' The respondent asked if she wanted to work her notice, the claimant declined and was sent a positive reference and a cheque for her notice.

The claimant was requested by Social Welfare to provide a letter stating she was made redundant. The claimant phoned the respondent for this letter but never received it and was eventually told she wouldn't be getting a redundancy payment. The claimant informed the respondent that 'she would be taking it further' and he hung up. The respondent's wife rang about paying for the furniture so the claimant immediately sent her husband in to pay for it.

## **Determination**

The Unfair Dismissals Acts impose a burden on the respondent to show that the dismissal was not unfair. Fair procedures include but are not limited to the right to representation, an investigation and appeal process, and notification as to the nature of a disciplinary meeting.

In all the circumstances the Tribunal finds that fair procedures were not applied and that the dismissal was unfair in every way. The Tribunal awards the claimant €1,760.00 as compensation under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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