

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE
-claimant

CASE NO.
UD960/2009

against
EMPLOYER

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan
Members: Mr D. Moore
Ms. E. Brezina

heard this claim at Dublin on 16th March 2010

Representation:

Claimant: XXXXXXXXXX

Respondent: Ms. Deirdre Gavin, Ibec, Confederation
House, 84/86 Lower Baggot Street, Dublin 2

Background:

The respondent in this case is a hair/beauty outlet. The claimant was a trainee hairdresser. The claimant says she was unfairly dismissed. The dismissal is disputed by the respondent.

The claimant contacted chronic dermatitis and it was contended that there were discussions as to whether she could continue to work as a hairdresser. The company sent the claimant her form P45 whilst she was out sick.

The representative for the respondent contends that the claimant was going to resign. The claimant met the HR manager and told her that she was going to resign. The HR manager told her that the company would need it in writing. There was some discussion that another position might be available for the claimant. The claimant was to attend for interview for this position. Following the claimant's non-attendance at the interview for that other position the company wrote to the claimant and issued the claimant her P45.

Claimant's case:

The claimant gave evidence that she commenced employment with the respondent in April 2007.

The claimant explained that a lot of her co-workers told her that she would become used to the chemicals that were used. The claimant told the colourist that she had contracted dermatitis. She then used gloves but found that they were not skin tight; they were like catering gloves. She then bought "proper" hairdressing gloves. The condition drove her "mad" but "I still went to work a lot of the time with it". A Ms D asked her if she wished to continue working in the company because of her condition and she assured Ms D that she did. Ms D then said to her that she could offer her work at the reception. She told Ms D that she would see how things progressed.

The claimant told the Tribunal that she wanted to stay in the job as she had "only one year left to go (training)". She did not suggest to anyone that she would leave and she wanted to stay in the respondent company.

She was out sick when she received a letter from the respondent. The letter instructed her to wear barrier cream and gloves. Also other colleagues constantly told her to wear gloves.

At some time she was told that she would have to resign before she could be offered another position. However she did not resign. She went to a meeting with Ms B, who was the HR admin person. She asked why she was at the meeting if she did not have a letter of resignation. Ms B gave her a letter. She did not sign the letter and brought it home to her mother. Her mother then phoned the respondent and asked why she had received a letter of resignation.

The claimant received no further contact after the letter of resignation.

Cross-examination:

It was put to the claimant that on 26th January 2009 the company requested a fitness to return to work certificate and the claimant agreed that was so. The claimant agreed that she returned to work on 26th and was on a day off on the 27th January.

The claimant did not agree that she said that she was resigning. When asked why she was asked to meet with HR the claimant replied "it was to put me in another position". The claimant agreed that she was offered another position and that an interview was arranged for circa 11th February for a new position.

When asked why she did not attend the interview for the new position the claimant explained that she had to go to hospital A & E department.

A letter from the respondent to the claimant, dated 12th February 2009, was opened to the Tribunal: " I write following your failure to attend a scheduled interview for the position of salon co-ordinator at the HR department on Wednesday February 11, 2009 with my colleague (named person), HR Generalist. If you would like me to reschedule for a more convenient time please do not hesitate to contact me.

I also request you forward to me as you agreed to during our meeting at the HR department on February 4, 2009 your resignation in writing and in addition to this, a letter from your doctor confirming that you are unable to continue your employment as a hairdresser due to dermatitis, this is necessary in order to waive your contractual obligations to the company".

The claimant denied receiving the letter of 12th February 2009. The claimant denied that she did not submit sick certificates; She denied that she didn't submit sick certs, as she was

ot “contractual” with the company.

Respondent’s case:

The Tribunal heard evidence from the salon manager. She became aware that the claimant had dermatitis in March 2008. It was required that employees sent in sick certificates after two days of absence. Nine out of ten times the claimant’s father brought in her sick certificates.

In the contracts of employment it was explained about the procedures regarding dermatitis. Also there were wall charts explaining about procedures. There was a HSE wall poster and a HSE booklet on the reception area. Dermatitis is manageable for a lot of people but for some it is not.

Circa 29th January 2009 the claimant phoned her to say that she would return to work. She told the claimant that she would need a certificate from her doctor. The claimant told her that she had received a letter from HR and did not understand the letter.

The claimant returned to work on 26th or 27th January. The senior receptionist was present and she had told the senior receptionist that the claimant was to have a letter.

The claimant was off work until 29th January. The claimant phoned her and was upset. The claimant told her that she had not slept as the “itch was going through her system and could not take it anymore”. She told the claimant that to resign she would have to set-up an exit interview. She phoned the claimant back and told her that she had set-up a meeting for 04th February.

She had explained to the claimant that she would have to finish her apprenticeship before they could re-start her in another position.

Cross-examination:

The witness explained when asked that the claimant told her on 29th January that she would have to resign, she could not do this anymore. She then told the claimant that she would have to set-up an exit interview.

The Tribunal heard evidence from the HR administrator for the company. She received a call from the salon manager to say that the claimant had phoned her to tell her that she resigned. She contacted payroll section. She contacted the claimant to see if she would be interested in another position. She asked the claimant to bring in her resignation in writing. The claimant arrived in and confirmed her resignation; the claimant did not have her resignation in writing. She gave the claimant a form to sign and she took the form. She questioned the claimant and the claimant told her that it was because of dermatitis and that it was too painful to continue.

The new position or new role (that the claimant was to meet about or apply for) was one of salon co-ordinator and paid circa €8 to €9 per hour.

In a phone call with the claimant’s mother she explained that the claimant resigned and the claimant re-confirmed with herself. She then sent correspondence to the claimant.

The claimant and her mother did not show for a meeting with her.

The witness explained that she spoke to her manager about the situation and he advised that the

claimant could retract her decision and there would be no problem whatsoever excepting that she had to be fit to return to work.

Determination:

The Tribunal having carefully considered the evidence adduced at the hearing does not find that the Claimant was dismissed from her employment with the Respondent but rather than the Claimant resigned from her employment with the Respondent. It follows that any issue as to unfairness or otherwise of a dismissal does not arise. Therefore, the claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)