

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE

CASE NO.  
UD1680/2009, MN1643/2009

against

EMPLOYER

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly B L

Members: Mr C. McHugh  
Mr A. Butler

heard this claim at Wicklow on 27th July 2010

### **Representation:**

Claimant: Ms Audrey Coen B L instructed by  
Augustus Cullen Law, Solicitors, 7 Wentworth Place, Wicklow

Respondent : Mr. Brian O'Sullivan, IBEC, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

### **Respondent's Case**

The respondent operates several leisure centres throughout the country including one in Wicklow town where the events pertaining to this case occurred. This centre's manger and a joint director of the respondent justified the claimant's dismissal on the grounds of redundancy. She told the Tribunal that the leisure industry was particularly vulnerable to the general downturn in consumer activity and that this decline in business adversely impacted on the turnover and financial affairs of this particular centre among others. Certain financial figures were produced in an attempt to support that contention. Cost saving measures and cutbacks were introduced to combat the decline in income. Since salaries formed a large part of expenditure labour costs had also to be reduced.

While not directly involved in the decision to terminate two cleaners including the claimant the witness defended it saying that the cleaning roles could be absorbed and distributed among the remaining employees at no extra cost. At that time the claimant was working part time and received a weekly remuneration of around €135.00 per week. She was given written notice of her redundancy by another manager/director on the sixth of April 2009.

The claimant had been reporting late for work on a number of occasions particularly in late 2008 and early 2009. In speaking to her about this issue the witness offered her a later start to allow her to arrive in a punctual fashion. Her lateness was apparently due to her domestic arrangements and to the ongoing roads works in the area. On 10 February 2009 the claimant again arrived late for work and the witness again brought that fact to her attention. This informal reprimand was followed by the arrival of the claimant's spouse on the premises. As a result of the ensuing altercation between the husband and the witness he was banned from the centre. The claimant became upset at this turn of events and stated she could not work that day. The witness reported that incident to the area manager who in turn contacted the claimant about that issue. The witness denied that she told the claimant that her job was now gone. A meeting addressing that issue took place two days later but the witness did not attend it. The claimant subsequently submitted a medical certificate that stated she was unable to attend work for a week up to 23 February due to stress.

As part of the cost cutting measures the respondent decided that there was no need for cleaners on Saturdays. The witness said that discussions about this were conducted informally and that perhaps miscommunication occurred. In any event the claimant reported for work on three Saturdays subsequent to that decision and received payment for that time. The witness became aware of that and the payments made to the claimant for those three Saturdays were deducted in full from a later normal week wage. A complaint lodged with the office of the Rights Commissioner resulted in the return of the claimant's pay for those Saturdays. The witness was aware of the complaint and its results.

The respondent's incoming managing director and current financial controller was a party to the decision to make the claimant redundant. That decision was made prior to meeting the claimant in early April 2009 informing her of that decision. This witness stated that having a separate cleaning section for Wicklow was a luxury the respondent could no longer afford. She was also aware of the incident involving the claimant on 10 February 2010 and of the payment issue and the Rights Commissioner's input.

The second cleaner who lost her job was re-engaged at the centre at the end of June 2009. She had replied to an in-house advertisement that sought the position of a junior receptionist. She also contributed to the cleaning of the centre. The claimant was not informed of that possible position.

### **Claimant's Case**

This second cleaner initially commenced part time work with the respondent in November 2007. Her hours were increased to a full time position during the maternity leave of the claimant. This witness acknowledged she was also let go in April 2009 along with the claimant. While frequenting the leisure centre subsequent to that date the witness became aware of and applied for a position of junior receptionist at that centre. Her application was successful and she recommenced work there on 22 June 2009. Notwithstanding the title of her job she also undertook cleaning duties upon her return to the respondent.

The claimant started employment as a cleaner with the respondent in May 2007 working up to twenty-five hours per week. At times she also acted as a receptionist at the public office in the entrance hall of this centre. Her working hours were later increased to up to forty per week. In spring 2008 she went on maternity leave and when she returned in autumn a new centre manager was in attendance. At the claimant's request her hours were then reduced and she was rostered to work on four days per week including Saturdays. The witness insisted she was never told of a later

change in that roster and therefore continued to report for work on Saturdays. In early 2009 and on receiving her payslip the witness noticed a sizable once off shrinkage in her wages. This was due to monies having being deducted for a number of Saturdays. Her complaints about those deductions were upheld and the outstanding amount was repaid to her.

The witness recalled an incident on 10 February 2009 on the premises involving her manager, husband and herself. She accepted she had been frequently arriving late for work prior to that date. When she told her manager she could not work that day as a result of being upset the claimant heard that manager reply that if that was the case and you leave then your job is gone. She attended a meeting two days later when those issues were addressed and a resolution of sorts emerged. The witness felt she had been bullied by that manager and was declared medically unfit for work for a week from 16 February 2009.

In early April the claimant was informed that her position as a cleaner was being made redundant. That took effect on 20 April 2010 one month shy of attaining two years service with the respondent.

### **Determination**

The Tribunal do not accept the respondent's contention that a genuine redundancy existed in this case. The respondent may have achieved a very modest cut in salaries due to the dismissal of the claimant but their subsequent action in re-employing the second cleaner suggests there were other reasons for the claimant's dismissal. The issues over payment of wages and the poor relationship between her and the centre's manger could have contributed to the timing and decision to dismiss the claimant.

The claim under the Unfair Dismissal Acts, 1967 to 2007 is allowed and the claimant is awarded €5000.00 as compensation under those Acts.

The Tribunal accepts the evidence of the respondent in relation to the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and is satisfied that the appelland received her proper notice in this case. The appeal under those Acts therefore fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

