

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**

**CASE NO.**

EMPLOYEE - claimant

UD1256/09

**Against**

EMPLOYER - respondent

**under**

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr. L. Tobin  
Mr A. Butler

heard this claim at Wicklow on 6th May 2010 and 3<sup>rd</sup> September 2010.

#### **Representation:**

Claimant: Ms Jackie Byrne BL, instructed by Ryan & Company, Solicitors, 42 Woodley Park, Kilmacud, Dublin 14

Respondent: Ms Emma Hanratty BL, instructed by Mr. Conor Maguire, Conor Maguire & Co., Solicitors, Blacklion House, Greystones, Co. Wicklow

The determination of the Tribunal was as follows:-

#### **Claimant's Case:**

The claimant commenced working in the floristry trade in 1987. She attended an art and design school and completed exams in floristry. In 1990 she commenced employment in G Florist. The business was sold in 2000. At that time she felt she needed a change and moved to another florist shop in Dublin for three and half years and then returned to G Florist. TT owned the business then. TT felt there was no need for full time staff so she worked a four-day week. Other part time staff worked in the florist with her.

She was informed in October 2003 that the business was being taken over by two males, one taking a more active role (IM). The new owners also owned an undertakers shop in Wicklow. PL

managed both shops.

The claimant was asked to attend a meeting with IM and PL. Longer opening hours, new ideas for the shop and new suppliers were discussed. There was a suggestion that she work an extra day, as it was unfair on other staff working a five-day week. The claimant said she could work a fifth day but this was not finalised. She was asked if everyone pulled their weight. She contended that they worked well as a team. She was asked to be the senior florist and to report to PL, her manageress. In PL's absence she was to report to IM. All staff met PL and IM soon after her meeting with them.

Work was hectic in the shop. Deliveries were less frequent than under the previous owner and there were stock changes, such as basic flowers, which meant that luxury bouquets were hard to prepare. Customer complaints followed that bouquets were not up to standard. She mentioned this to PL who said she would mention it to IM. There were complaints about deliveries and she did not know from day to day who was looking after deliveries. Orders were late leaving the shop.

Customers were getting disgruntled. The claimant's role was moving from florist to customer support. She had to send apology notes to customers. When the shop was low in supplies IM promised to bring these over to the shop but he wouldn't arrive.

A shed was purchased for storage but keys were limited to staff.

In early December 2008 the claimant received a phone call from PL who said that there were lilies in the bin. It was a fraught conversation. Ten minutes later PL telephoned again. PL asked when did the lilies come in and insisted that she must know. She received a third phone call from PL and the claimant contended that she had to get on with her work and she put the phone down. Subsequently, PL informed IM about the altercation. IM and his business partner MOD arrived in the shop. The claimant was asked to put in writing what had happened.

The following morning IM telephoned her. They both went for coffee. She told him that she had written the letter but that it seemed petty. She asked him to please tell her if he really wanted her working in the shop. IM said he did not want her to leave and that she had a good rapport with customers. After that PL and the claimant got on well together. They needed a plan for Christmas. There was to be no overtime.

The claimant did not attend the office Christmas Party, as she had to work the next day. A and herself opened the shop the next day. IM was to do deliveries but he never arrived and someone else had to look after the deliveries. As supplies were locked away in the shed only about one third of the orders was completed. Inter flora orders were behind and there were complaints about deliveries. The shop reopened on 30<sup>th</sup> and 31<sup>st</sup> December 2008. They were told just to clean the shop. A delivery of flowers arrived on 30<sup>th</sup> December. PL had telephoned the claimant the previous night to say she was sick. MOD wanted funeral work done and this was a priority. The shop was in chaos. There were again complaints from customers. Some people received two orders and some never received their orders. PL's husband arrived with PL's mobile business phone and handed it to the claimant.

The shop re-opened on 5<sup>th</sup> January 2009. The claimant hoped to start afresh. There were frequent calls about the quality and standard and delivery of flowers. She spent much time dealing with customer complaints and her own work fell behind. Cheaper flowers were being used. She was unable to finish her orders and staff had to assist. PL terminated her employment in January 2009. There was no replacement for her. Both she and IM took over PL's job. No day

ran smoothly. Suppliers complained about not receiving payment. She spoke to IM about these complaints. He promised to telephone them.

She spoke to IM about the importance of ordering roses well in advance of 14<sup>th</sup> February. She was informed they were due in on 11<sup>th</sup> February. She offered to come in on 11<sup>th</sup> February and was told there was no need to as it was her day off. On 12<sup>th</sup> February when she arrived at work the staff were already there conditioning flowers. She cleared a shelf for flowers. IM arrived and wanted space. She said that they normally put the roses up on the shelf. IM said there were no roses. He became aggressive and told her there were no roses and not to start. They would be in later. He said he did not like her attitude and the way she dealt with staff was appalling. She was very surprised as she got on with the staff and helped two girls with their English. IM said "you need to be here five days a week if you want to know what's going on".

IM edged her into a corner. The conversation was heated. She felt incredibly threatened and intimidated. She picked up her bag and said she was not listening to this and left.

She texted the respondent for her P45 and received monies owed to her.

The claimant has not secured work since 12<sup>th</sup> February 2009. She has applied for positions but to no avail.

PL had worked in florist shops for fourteen years. She had worked in the shop in Wicklow town and was asked to manage the G Florist. The arrangement to liaise between the two shops did not really work out. The G Florist was very busy and staff were under pressure. Customers knew the claimant and so she received all the complaints.

When IM was doing deliveries he kept disappearing. It was difficult to track him down. MOD was no help. PL did not have any idea what stock was kept in the shed and who had the keys.

In relation to the lilies in the bin, IM had told her to sort it out. She rang the claimant who said she did not know anything about it. She then rang IM who said they needed a refund. She rang the supplier for a refund who subsequently said there was nothing wrong with the lilies. She rang the claimant again and was abrupt with her and told her she should know and then the claimant hung up on her. She contended that IM had never liked the claimant and was not nice to her.

In November 2008 IM's relationship with PL changed. He asked her not to ring sales into the till. She was not going to do this and didn't want to it. She wasn't happy with this and did not trust IM at all. IM did not like people who stood up to him.

In January 2009 she gave IM a week's notice of her leaving the business.

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

IM together with his partner MOD took over G florist in October 2008. IM had only six months experience in a flower shop in Wicklow. He hired PL as an authority figure to oversee G Florist and the shop in Wicklow. He met the claimant and the staff on the first day of the take over. He thought he had bought a good business and told staff that if they did things right it would be a successful business. The claimant had been very good with customers. He did not think much time

was spent appeasing customers. Whoever took a complaint from a customer, normally dealt with it. Staff were advised that grievances were aired through firstly PL, then IM and MOD.

He saw tension between the claimant and PL and invited them to a meeting on 12<sup>th</sup> November 2008. He offered the claimant the role of Head Florist. He also asked the claimant if she could work an extra day and also Saturdays. The claimant said she would come back in relation to working the extra day. She agreed to work every second Saturday. She did not come back to him about working the extra day. The claimant was told to report to PL. A list of all staff phone numbers was posted on the wall in G Florist.

IM heard there had been an argument between PL and the claimant. His accountant advised him to get them to put an account of the altercation in writing but they did not. The claimant said it was ridiculous to have to put it in writing and she wanted to leave. Following a conversation with the claimant he persuaded her to stay and he did not take the altercation any further.

PL had said there were was no need for overtime if things kept running smoothly. On occasion there had been need for overtime. The day after the Christmas Party IM forgot to inform inter flora that G florist was closed. MOD went to the market and it was slightly messy. It was a learning curve for them.

PL left for the reason of wanting to return to college. He had never sworn at her. He was annoyed at her leaving. He took over from PL. PL was never replaced.

As staff had worked late on Wednesday, 11<sup>th</sup> February 2009 he asked them if they could come in at 7.30 am the following day to condition flowers. The claimant did not work Wednesdays. The claimant arrived at 9 am the following day and opened the fridge and asked where were the roses. He told her to relax and that they were due in at 12 noon. The roses had been ordered the week before but there was a delay in shipment. He contended that the claimant was creating an atmosphere. The claimant said that he had been trying to get rid of her. He said if he had wanted her to go he would have let her go after the last altercation. He slightly lost his temper. He told her that he was her boss and that he did not like the way she talked to him. The claimant said she had enough and left. He thought she needed time to cool down. Subsequently, she texted IM seeking her P45 and holiday pay. The claimant had not been replaced in G Florist.

At no time had he ever instructed staff not to put cash through the till.

A told the Tribunal that when IM and MOD took over the business it had been chaotic but manageable. They had no experience in floristry. After the Christmas Party she had opened G Florist with the claimant. The shed was locked. They had to clean the shop for the Monday. There were always problems with missing dockets.

On 12<sup>th</sup> February 2009 IM arrived at G Florist shortly after the claimant. She had heard raised voices but did not feel the need to intervene. She had been at the back of G Florist and left the area and moved to the front of the shop. There were always problems at busy times. She never found IM aggressive. She thought the claimant found it difficult to work with the new owners. The previous owner had worked mostly in the shop. She never thought of leaving G Florist and still works there. She worked with the claimant for a number of years and had a good relationship with her. The claimant had helped her when she started in G Florist. She was surprised when the claimant left G Florist. She has since lost contact with the claimant.

EV had worked in G Florist for eleven years. She worked there one day a week. When change occurred it was always different. She was surprised the claimant had not returned to work following the altercation on 12<sup>th</sup> February 2009. She felt IM was an easy boss and that he could have been more stringent. She contended G Florist ran smoothly.

**Determination:**

The Tribunal has carefully considered the evidence in the course of this two-day hearing.

The respondents took over the retail unit wherein the claimant had been working for in excess of five years. The claimant had been happy in her role as a full time florist and it is common case that the previous owner had a full time presence in the shop and had managed the shop efficiently.

When the respondents took over they appointed a new manager above the claimant but this manager would not be on the premises on a full time basis as she was also expected to spend time in a sister shop in Wicklow. In reality, it seems the newly appointed manager spent most of her time in the Wicklow shop. Subsequently, this manager left the employment. At this time the managing of the shop fell to IM who together with his partner had purchased the retail unit. IM conceded that he had limited management experience and the oral evidence was consistent to the effect that the period from October 2008 to February 2009 (a four month period) was more chaotic than the staff were used to. The claimant's position became difficult by reason of the fact that by default her role was being expanded from florist to Quasi Manager—handling, as she was dealing with more customer queries and complaints and she had to double check that IM was making the necessary arrangements with suppliers and customers. IM was on a learning curve and his lack of experience was clearly a cause of some frustration for the claimant. The claimant took great pride in her work and believed standards were slipping.

By February 2009 things came to a head and an altercation occurred between the claimant and IM. On the scale of things the row arose over something relatively small – namely the delay in Valentine's Day delivery of roses.

The row was heated and unpleasant and such rows are unacceptable in the workplace. However, the Tribunal must be satisfied that this altercation taken against the previous four months backdrop is objectively sufficient to justify an immediate resignation.

The Tribunal cannot agree that the claimant reacted reasonably in all the circumstances. The claimant could have taken her grievance to MOD with a view to having her role and position clarified and with a view to having the relationship between herself and IM improved upon. This she did not do.

The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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