

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD1584/2009

MN1560/2009

WT672/2009

against

EMPLOYER

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr J. Horan

Mr J. Jordan

heard this claim at Wicklow on 12th October 2010

Representation:

Claimant: xxxxx

Respondent: The respondent in person.

The determination of the Tribunal was as follows:-

The claimant withdrew the claim under the Minimum Notice And Terms Of Employment Act, 1973 to 2005 at the outset.

Respondent's case

The respondent stated that the claimant commenced employment on a temporary contract on 1st October 2007. It became apparent early in 2008 that there was a difficulty with the sales figures being achieved by the claimant. However a second temporary contract was given to the claimant in October 2008 and it was hoped that with further training the claimant would improve her sales figures. Sales figures and targets together with how the shop was doing were topics of discussion between the respondent and the claimant on a weekly basis. According to the respondent the claimant resigned her position on 19th May 2009. The respondent also stated that the shop closed down in November 2009 and that the remaining two employees were let go but neither of them had

sufficient service to qualify for a redundancy lump sum payment.

The representative for the claimant put it to the respondent that there had been a request for information, under the Freedom Of Information Act, and other correspondence sent to the respondent but that no reply had been received. The respondent stated that she was not aware of any such request or correspondence.

Claimant's case

The claimant stated that she commenced employment in October 2007 and had worked 39 hours per week up until she was dismissed on 19th May 2009. According to the claimant she was never told that her sales were low and stated that the clothes were very expensive and hard to sell.

On the 19th May 2009 the claimant said that the respondent called to the shop and told her to cash up. When this was done the respondent allegedly told the claimant that her application for the post of manager had been rejected and that because she could not sell she was being let go. It was further alleged that the respondent told her that a new manager was being appointed and that any further hours would be divided out and then asked her for the keys. The claimant handed back the keys and left through the back door. A P45 was subsequently issued to the claimant in June 2009.

Determination

The claim under the Minimum Notice and Terms Of Employment Acts, 1973 to 2005 was withdrawn at the outset.

The Tribunal only has jurisdiction to hear claims in relation to holidays under the Organisation of Working Time Act, 1997 and as no evidence was adduced in relation to non- payment of holidays the claim under this act fails.

The Tribunal are satisfied that the claimant had not received any warnings about her alleged poor sales performance prior to being dismissed and that having been dismissed was not given an opportunity to appeal that dismissal. This is a clear breach of fair procedure and natural justice and therefore the Tribunal finds that the claimant was unfairly dismissed and awards her €5,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

