

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE  
Co. Clare - *claimant*

UD762/2009  
WT329/2009

against

EMPLOYER - *respondent*

under

### ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr K. T. O'Mahony BL

Members: Mr B. O'Carroll  
Mr. F. Dorgan

heard this claim at Ennis on 18 May 2010

Representation:  
\_\_\_\_\_

Claimant(s) : Ms. Yvonne Quinn BL instructed by O'Kelly Moylan, Solicitors  
Market Sq, Kilrush, Co.Clare

Respondent(s) : Mr. Neil McNelis, Solicitor, The Square, Miltown Malbay, Co. Clare.

The determination of the Tribunal was as follows:-

#### **Preliminary Issue**

Evidence was produced to the Tribunal at the commencement of the hearing that this claim was originally made to the Rights Commissioner service. The respondent objected to the Rights Commissioner service hearing the claim. The Tribunal noted that this delay resulted in the claim being lodged with the Employment Appeals Tribunal outside the 6 months time limit. The Tribunal is satisfied that the delay caused by the objection constitutes exceptional circumstances giving the Tribunal discretion to extend the time for instituting the claim. Accordingly, the Tribunal has jurisdiction to hear the claim as it was lodged within one year from the termination of the claimant's employment.

## **Summary of the Evidence**

The respondent, who owns and runs a hairdressing business, organised a work permit for the claimant and she commenced employment with her in May 2003.

Initially the parties enjoyed a good relationship. However, the claimant maintained that this changed when she had a miscarriage in 2005. The claimant had a continuing health problem thereafter until 2007, at which time she was put on one day a week until around April 2008. The claimant felt that the respondent was planning to let her go. The respondent maintained that she was not aware in 2005 that the claimant had a miscarriage.

The claimant asserted that she had not received rest breaks, pay for overtime, her full holiday entitlements some years and none other years and that she was asked to do extra-curricular duties which included cleaning two apartments owned by the respondent, washing the respondent's car and over the latter years washing the dogs dishes. Her hours of work were 9.30 am to 6.00 pm but the respondent expected her to work overtime and her family never knew when to expect her home. She accepted that her contract required her to be flexible in her work position but the word flexible was never explained to her. She developed back pain because the sink in the salon was unsuitable. The respondent denied these allegations. Her position was that the salon closed at 6.00 pm except on the rare occasions when someone urgently requiring attention came in late; they did not work in the salon after 6.30 pm. In 2004 she helped to make the arrangements for the claimant's wedding. She had gone guarantor for the claimant. Neither the claimant nor anyone else had complained about the sink and in any case it had been replaced. The claimant had her lunch in the kitchen on the premises or she went out and she often left customers waiting. The claimant was often late for work. She spoke to/reason to reprimand the claimant on several occasions.

The claimant took holidays from 18 April to 1 May because the respondent had refused her time to deal with a dental problem. On one of her last days at work with the respondent while she was doing a client's hair a customer came to the salon at 6.45 pm to have his hair cut. When the claimant asked the respondent if she could come in an hour later the following day if she attended to the customer the respondent became very angry.

According to the respondent the claimant was an excellent hairdresser but she was headstrong and some clients found her to be a little bit rude. On 3 May 2008, because the claimant was back working full-time and it was coming up to the busy season (June to September), the respondent issued her with a written warning concerning her attitude, behaviour and time-keeping. The letter of warning was enclosed in an envelope along with the claimant's pay cheque and given to her as she was leaving the salon.

Having got to her car the claimant discovered that she had only been paid for three days holidays. She telephoned the respondent to enquire about her holiday pay. She then returned to the salon to collect her combs. According to the respondent the claimant threw a scissors belonging to the salon in front of a glass tray. She asked the claimant, "Am I to take it that you are leaving your employment?" The claimant replied that she could do as she pleased. The respondent told the claimant if she was leaving the premises to return the keys and the claimant threw the keys on the floor. According to the claimant while she was taking the key from the key ring her finger became caught in the ring and the key fell to the floor. She denied throwing the key on the floor, having had a scissors from the salon or leaving the employment on 3 May 2008. The respondent understood that the claimant was leaving her employment.

The claimant reported for work on Tuesday 6 May 2008. The respondent invited her upstairs where she told the claimant that she was paid enough and was expected to work longer hours. According to the claimant she asked the respondent if she was expecting her to work in her private time and told her that what she was asking her to do was illegal. The claimant maintained that she had no opportunity to discuss the letter of 3 May with the respondent. She told the respondent that she was not a slave but the respondent reminded her that she was the boss and that if she wanted the job that she expected her to do longer hours and that if she did not want to accept her conditions to "Just go". The claimant waited for a few seconds believing that the respondent would tell her that she did not mean it but she said nothing. The claimant left and slowly went to her car, giving the respondent an opportunity to change her mind and tell her not to go. The claimant denied leaving the employment. No matter how difficult things became she would try to sort it out. She needed the job. She did not lose her temper and storm out on 6 May 2008. The respondent did not tell her to go home and consider the situation. She was dismissed by the respondent and did not walk away from her job.

It was the respondent's position that on the morning of 6 May 2008 she told the claimant that she had not been expecting her to come to work. She told the claimant that she was doing her best and that they would have to work together, that she was always prepared to meet her half way. The claimant told her that she did nothing for anyone and that she was only interested in what she could gain for herself. She told the claimant that this was very hurtful. She told the claimant to go for a walk or drive to think about it and that when she returned she expected an apology. The claimant collected her bag and told a person in the salon that she was no longer working there. The claimant telephoned her a few days later and requested her P45. The respondent did not have a grievance procedure but she had told her employees to come to her if they had a problem.

### **Determination**

Dismissal was in dispute in this case. While a tense situation had developed between the parties on 3 May 2008 the Tribunal finds that the claimant did not resign from her job that evening.

There was a major dispute as to the contents of the conversation that took place between the parties on the morning of 6 May 2008. On the balance of probability the Tribunal accepts the claimant's evidence as to what was said during that conversation. It was reasonable for the claimant to construe the words "Just go" as constituting a dismissal. As there were no substantial grounds justifying the dismissal it constituted an unfair dismissal under the Unfair Dismissals Acts, 1977 to 2007. The Tribunal awards the claimant compensation in the sum of €6,500 under the Acts.

The claimant's leave year commenced in November and ended in May. The claimant worked one day a week during the period November 2007 to April 2008. She received holiday pay for six days and therefore is not entitled to compensation under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Irena Jaudzemiene, 15 Riverside, Inagh,  
Co. Clare - *claimant*

UD762/2009  
WT329/2009

against

Helen McCarthy, St Brendan's, Church Street, Lahinch,  
Co Clare - *respondent*

under

### ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr K. T. O'Mahony BL

Members: Mr B. O'Carroll  
Mr. F. Dorgan

heard this claim at Ennis on 18 May 2010

Representation:  
\_\_\_\_\_

Claimant(s) : Ms. Yvonne Quinn BL instructed by O'Kelly Moylan, Solicitors  
Market Sq, Kilrush, Co.Clare

Respondent(s) : Mr. Neil McNelis, Solicitor, The Square, Miltown Malbay, Co. Clare.

The determination of the Tribunal was as follows:-

#### **Preliminary Issue**

Evidence was produced to the Tribunal at the commencement of the hearing that this claim was originally made to the Rights Commissioner service. The respondent objected to the Rights Commissioner service hearing the claim. The Tribunal noted that this delay resulted in the claim being lodged with the Employment Appeals Tribunal outside the 6 months time limit. The Tribunal is satisfied that the delay caused by the objection constitutes exceptional circumstances giving the Tribunal discretion to extend the time for instituting the claim. Accordingly, the Tribunal has jurisdiction to hear the claim as it was lodged within one year from the termination of the claimant's employment.

