

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE  
*-claimant*

CASE NO.  
UD1633/2009

against

EMPLOYER  
*-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. Lucey  
Members: Mr J. Killian  
Mr D. Mc Evoy

heard this claim at Killarney on 28th July 2010

#### Representation:

Claimant: Ms Eimear Griffin, Murphy Ramsay Walsh,  
Solicitors, 12 Ashe Street, Tralee, Co Kerry

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

#### **Background:**

The respondent is a hair salon and the claimant a hairdresser/stylist. The claimant contends that the respondent unsatisfactorily investigated a claim she had made that she was bullied and harassed. The respondent contends that she was not dismissed from her employment and that she resigned of her own free will. Dismissal is in dispute therefore the Tribunal heard evidence from the claimant.

#### **Claimant's case:**

The claimant told the Tribunal that her salon manageress (SJ) was harassing her at work. She submitted an informal complaint. She informed the area manageress (LC). Things were then amicable then they got worse. She submitted a formal complaint to the HR department on 4<sup>th</sup> December 2008. The respondent carried out an investigation. She got a date to attend a meeting. A week or two after attending the meeting the salon manageress behaviour deteriorated; it was obnoxious and abusive and the salon manageress told lies. She could not work with her and she contacted HR and told them she was not continuing to work. She contacted her GP and he recommended that she take sick leave.

There had been an investigation in February. The respondent kept inviting her to a meeting. The respondent sent her to the company doctor in April 2009. It was agreed that she suffered

depression due to the workplace and to sit down with the respondent to agree a solution. She did not hear from the respondent after visiting the doctor after a while she had not been paid sick leave for a few weeks. She spoke to the HR manageress and was told that she was not to be paid until they discussed the situation. She told the HR manageress that she was resigning and was told to send it in writing, which she did. She got a letter from HR to say that there was another position in another salon. She resigned because she was frustrated with the way the respondent had dealt with the situation. She felt that it was she who was the problem to the respondent she felt the only option was for her to resign for the sake of her sanity.

**Respondent's case:**

The Tribunal heard evidence from the HR generalist (CC). She explained that they received a complaint in writing from the claimant on 05<sup>th</sup> January 2009. It arrived on 05<sup>th</sup> as it had been sent to the wrong internal address. They wrote to the claimant to schedule a meeting for 08<sup>th</sup> January 2009. She and SB travelled from Dublin to Kerry to the formal disciplinary meeting of the salon manageress, (SJ). She herself had no prior involvement in the informal process SJ was accompanied to the meeting the claimant was not accompanied and she had been advised that she could be.

The claimant told them that she was bullied and harassed by SJ. SJ had been appointed salon manageress three months prior. The claimant had agreed with the previous manageress that she could commence work at 9.30 am and SJ was questioning this arrangement. Prior to this or prior to SJ being promoted to the claimant had a good relationship with the claimant.

SJ was suspended from 25<sup>th</sup> to 28<sup>th</sup> January during an investigation. After the investigation was completed SJ was demoted from being salon manageress back to a stylist and given a final written warning. It was also decided that the area manageress and another manager would discuss with (SJ or the claimant) transfer options. They wrote to the claimant regarding transfer options but she did not reply to the letter. She herself did not hear from the claimant again.

In cross-examination the witness clarified that she did not hear from the claimant again until her resignation.

The Tribunal heard evidence from another HR generalist (NB). She explained that the claimant phoned her on 21<sup>st</sup> April 2009 to ask why her sick pay was being terminated. She told the claimant that it had been a director's decision because the investigation had ended. The claimant told her that she was sick and tired, that she was quitting and that she was resigning. She asked the claimant to put it in writing. The claimant said she was not happy with the outcome of her complaint. The witness told the Tribunal that they had acted quickly on the complaint and that the complaint had been upheld. The area manageress had kept in contact with the claimant during the investigation. The investigation had been completed and SJ had been demoted.

In cross-examination the witness clarified that SJ was not in their employment now as she resigned.

The Tribunal heard evidence from the area manageress (LC). The complaint came to her attention in late November 2008. She met the claimant and asked if they could sit down with the parties and the claimant agreed. The claimant felt that two clients were hers (that were booked for another stylist). SJ apologised and said that they had been entered into the book in error. The claimant apologised to SJ and SJ apologised to the claimant.

Just before Christmas she visited the salon and the claimant told her that she had written in a

complaint. She was concerned, as she had not heard that they had received a complaint. The next she heard was that the claimant had left her employment (because of the investigation/as she was on sick leave). She phoned the claimant and told her that she was sorry to hear that and was there anything that she could do. The claimant was anxious to return to work and hoped the investigation would not take long.

She got a call to say that the investigation was finished and that SJ was demoted and had gotten a final written warning. She then phoned the claimant and arranged to meet. She met the claimant. The claimant was not amenable to work with SJ. She asked the claimant if she would consider working in Tralee. She was aware the claimant lived in Tralee. They agreed to meet a week later. They agreed to meet a week later.

They met and that claimant said she had met her doctor and did not feel ready to return as yet. She mentioned the option of Tralee again.

They could not move SJ to Tralee as they had demoted her and had given her a Final Written warning and if they moved her she would lose her clients and this would be detrimental to her wages.

**Determination:**

The Tribunal unanimously determines that the claim under the Unfair Dismissals Acts, 1977 to 2007, succeeds. There were doctor's reports that recommended the claimant could not work with her former colleague. The Tribunal heard evidence as to the claimant's loss and both parties agreed her loss was €4,250.00. The Tribunal determines compensation to be the most appropriate remedy. Accordingly, the Tribunal awards the claimant the sum of €4,250.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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