

## **EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO.

EMPLOYEE

UD932/2009

against

EMPLOYER

under

### **UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. O. Madden B.L.

Members: Mr. J. Horan  
Ms. E. Brezina

heard this claim at Naas on 29th March 2010 and 29th October 2010

Representation:

\_\_\_\_\_

Claimant:

Ms Sharon O'Malley, 7 Ardilaun Court, St Stephen's Green, Dublin 2

Respondent: 29<sup>TH</sup> March 2010

Mr. Paul McCann, Grant Thornton, Chartered Accountants, 24/26 City Quay, Dublin 2

Respondent: 29<sup>th</sup> October 2010

No appearance by or on behalf of the respondent

The determination of the Tribunal was as follows:-

At the first day of hearing on 29<sup>th</sup> March 2010 the respondent submitted that this matter had formed part of a settlement in relation to a claim before the High Court. However the claimant disagreed with this and submitted that the claim for unfair dismissal did not form part of the claim before the High Court and was not included in any settlement.

The Tribunal is satisfied that the claim under the Unfair Dismissals Acts, 1977 to 2007 was properly before the Tribunal and the matter was adjourned to a later date. The Tribunal was not satisfied that it had evidence to decide the issue. In particular the Tribunal was anxious to hear the evidence of the respondent's solicitor who was involved in the settlement negotiation. This witness was not available and therefore the matter was adjourned.

At the resumed hearing on 29<sup>th</sup> October 2010 there was no appearance by or on behalf of the respondent. The claimant's representative stated that they were aware that the respondent was now

in receivership and that an application to come off record had been made by solicitor for the respondent on 20<sup>th</sup> October 2009. A person attended the hearing at the request of the Receiver and informed the Tribunal that he was attending in a “watching brief” and not as a representative of the respondent.

### **Claimant's case**

The claimant had an accident at work in July 2007 and was absent on sick leave for some time after that. She returned to work in November 2007 on the basis of a 20 hour week but the respondent paid her a full weeks wages from then until 6<sup>th</sup> October 2008. However according to the claimant the respondent started putting pressure on her to give a commitment as to when she would return to full time work. She also stated that there was an undermining of her duties. The claimant requested that she be allowed to work from home for part of the week. The respondent refused this request and informed the claimant that she would no longer be paid full wages but only the hours she was working. The claimant was annoyed at this and stated that she used some bad language at a meeting with the respondent but that nobody asked her to stop using such language.

The claimant was on sick leave from work until her dismissal on 6<sup>th</sup> February 2009.

### **Determination**

There was no appearance by or on behalf of the respondent. Having considered the uncontested evidence of the claimant and given that the onus is on the employer to prove that the dismissal was fair, the Tribunal finds that the claimant was unfairly dismissed. In making this finding the Tribunal had regard to the claimant's efforts to mitigate her losses and took into account Section 7 (1) (c) of the Principal Act as amended by

### **Section 6**

(a) “(c) (i). if the employee incurred any financial loss attributable to the dismissal, payment to him by the employer of such compensation in respect of the loss (not exceeding in amount 104 weeks remuneration in respect of the employment from which he was dismissed calculated in accordance with regulations under section 17 of this Act) as is just and equitable having regard to all the circumstances, or”

The Tribunal awards the claimant €39,601.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

