

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:		CASE NO.
EMPLOYEE		UD1059/09
	- claimant	MN1067/09
against		
EMPLOYER		
	- respondent	
Under		

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1977 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. V. Gates BL

Members: Mr. G. McAuliffe
Ms. E. Brezina

heard this claim at Dublin on 8th April and 22nd February 2011.

Representation:

Claimant: Mr. John Curran BL, instructed by Mr. Manus Sweeney of
Manus Sweeney & Company Solicitors, Suite 226, Capel Buildings,
Mary's Abbey, Off Capel Street, Dublin 7

Respondent: Ms. Deirdre Gavin, IBEC, 84/86 Lower Bagott Street, Dublin 2
On 8th April 2010 and
Ms Caoimhe Scolard, IBEC, 84/86 Lower Bagott Street, Dublin 2
Om 22nd February 2011

The determination of the Tribunal is as follows:

Claimant's Case

The claimant gave evidence. She worked as a hairdresser. It was what she always wanted to do. She completed the 4-year apprenticeship in three years, and she had progressed to the position of stylist. She was paid a basic wage and a commission. She had built up a regular clientele.

In October 2007 one of the claimant's colleagues decided to go travelling. She went on a career break. She was not asked to sign anything. She made the arrangement with the salon manager. The claimant then decided that she too would like to travel. She told her salon manager that she would take a year off and then return to her job. The salon manager then spoke to the area manager.

The claimant left for Australia on 27th June 2008. She returned home in December 2008 and

contacted her salon manager.

She phoned the HR manager on several occasions. At first the HR manager said she would look for a position for the claimant. Later the HR manager said that the claimant's P45 had issued.

The claimant contacted her union representative and he requested a meeting. The meeting on 4 March 2009 lasted about 5 minutes. The claimant was given the respondent's form for making an application for a career break. She was told that it was the policy from January 2008 that a written application was required. There was nothing they could do. It was the first she heard of it. Her salon manager had not known about the application requirement. The claimant knew employees who went on career breaks without forms. The claimant's salon manager was not present at the meeting.

It was put to the claimant that the salon manager would say she resigned. The claimant responded that there was no reason to resign. She was going travelling and would come back. She did come back early and she contacted the salon manager about vacancies. The HR manager said she could apply for available vacancies but on condition that she start a whole new contract. She did not apply.

She did not remember when the salon manager told her it was ok to take a career break but unless she got the ok she would not have gone. Before she left her colleagues had a collection for her and gave her a card. She assumed that because her trip started on 27th June 2008 that she was due back to work on 27th June 2009.

The claimant made efforts to mitigate her loss.

Respondent's Case

The claimant's salon manager gave evidence. The claimant left in June 2008. She contacted the salon manager in March or April 2008 to say she was leaving to go to Australia. She did not ask for a career break. She did not resign in writing.

The salon manager told the area manager that the claimant was leaving; it is normal procedure to do so. She also contacted the payroll section so that her P.45 would issue. There was a party to say goodbye to the claimant.

The claimant contacted the salon manager at the end of January 2009. The salon manager told her that the salon was full, there were no vacancies, but told her to contact the HR manager. She asked the claimant to contact her later in the year. January and February are the quiet months in this business; she would have a better chance of getting a job in June.

The salon manager knew about the career break policy. The HR manager sent it to her with a request not to advertise it. The policy was only discussed on request. She did not attend the meeting in March 2009 because nobody asked her to. No one else from the salon went on a career break. The claimant did not request a reference. It was not unusual for someone to resign without putting it in writing. She did not acknowledge acceptance in writing of the claimant's resignation. If someone leaves to join another company the area manager had an exit interview. In this case the claimant was leaving the country, so there was no exit interview. The salon manager did not know if the claimant was given holiday pay.

The HR Manager gave evidence. She was in this role nine years and was responsible for staffing

issues, recruitment and disciplinary meetings.

In January 2009 she received a telephone call from the claimant who wanted her position back following her return from abroad. The HR Manager liaised with the Salon Manager and the Area Manager and they unanimously agreed that the claimant had resigned her position and a P45 had issued with her final payslip. No letter accompanied the P45. The claimant had queried her final payslip. She advised the claimant that her file had been closed and no leave of absence had been applied for or granted.

The HR Manager received several telephone calls from the claimant and her father after that. She explained that there were no positions available but that June was the recruitment period. She was not getting through to the claimant and arranged a meeting with the claimant for 4th March 2009. The claimant's father also attended the meeting. The purpose of the meeting was to advise the claimant of the process on applying for leave of absence. The Salon Manager was unavailable. The HR Manager showed her the leave of absence policy. This policy had been distributed to managers only. The respondent thought it best not to distribute it to employees. The HR Manager also informed her that there were hairstylist vacancies in Letterkenny but none were available in Dublin but if a position became available she would let her know. Before she could say anymore the claimant and her father left abruptly.

Eleven staff had been on leave of absence in 2007. Thirteen leave of absences had been applied for and granted in 2008. When an application for leave of absence is granted, the travel date and return date are given and an employee's employment freezes and they are entitled to their position back on their return to the company. An agreement is signed by both parties.

The Area Manager gave evidence. He was thirty-five years in this role. He regularly visited hair salons.

When an employee resigns her/his manager informs him. He was informed that the claimant was leaving to travel abroad for an indefinite period and no return date had been disclosed. He instructed the Salon Manager to inform Payroll Section accordingly. This was done by telephone and no written request had been forwarded to that effect. No exit interview was necessary.

Determination

The dispute between the parties relates to whether or not the claimant sought and was granted leave of absence to travel abroad. There is also a dispute as to whether or not a P45 issued and was received by the claimant.

The Tribunal has carefully considered the evidence adduced in the course of this two day hearing. Of relevance to the issue of whether or not leave of absence was sought and granted is the issue of whether or not the claimant received a P45. The respondent maintains that a P45 issued to the claimant at the same time as a final payslip. Whilst the claimant denies receipt of a P45, she accepts that a final payslip was received and indeed she queried the holiday pay figures thereon. In all the circumstances, the Tribunal is satisfied, on the balance of probabilities that a P45 did in fact issue to the claimant together with the final payslip. On receipt of the final payslip the claimant was on notice that her employment terminated on 14 June 2008 yet never queried this.

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

Minimum Notice and Terms of Employment Acts, 1973 to 2005 also fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)