

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

-claimant

CASE NO.
UD2191/2009
WT920/2009

Against

EMPLOYER

-respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr. D. Hegarty
Mr. J. Flavin

heard this claim at Cork on 05 October 2010

Representation:

Claimant: Ms Cliona Kenny, Ernest J. Cantillon & Co. Solicitors, 39 South Mall, Cork

Respondent Frank Nyhan & Associates Solicitors, 11 Market Square, Mallow, Co. Cork

Summary of Evidence

The claimant took up full-time employment as a Beauty Therapist in the respondent's salon on completion of her training in 2007. Prior to this she worked part-time during two summers as well as completing her work experience with the respondent. Two other beauty therapists worked in the salon as well. The claimant had six-monthly performance reviews, which went well, and she received her pay-rises accordingly.

It was the respondent's evidence that customer complaints are to be entered into the complaints book and logged on the computer. The complaints book is kept on the counter. The respondent had to reprimand the claimant and issue her with verbal warnings on several occasions due to complaints from customers and staff. In June 2009 the respondent received the first written complaint about the claimant from a customer. The respondent showed the claimant the letter of complaint and informed her that if there are any incidents or complaints she should be informed and the complaint should be written down in the complaint book or logged on the computer. The claimant had done neither. All the other members of staff followed the complaint procedures. According to the respondent it is important that she learns about complaints so that she can deal

with the matter. The claimant's position was that she was not aware of the complaints procedures at this stage. On receipt of a complaint the claimant normally took the complaint details, tried to rectify it and then informed the respondent. She had never been informed about any staff complaints.

On 25 June 2009 the respondent wrote to the claimant re-iterating the importance of customer care, referring to her refusal to provide basic treatments to two customers and her bad service to others and stating that "*any reoccurrence of the above kind will result in instant dismissal.*" This letter also advised the claimant to secure her own professional insurance. The respondent denied telling the claimant that she could not work on the salon floor without having her own insurance cover.

In late June the respondent called a staff meeting. At the meeting the respondent gave the staff a leaflet on team focus and all members of staff signed it. According to the claimant that was the first time she had seen the leaflet. After this meeting the respondent had a meeting with the claimant to discuss the complaints she had received about her including the earlier written complaint. The claimant's position was that she had not received any prior notice of the meeting. Nor had she had been shown the written complaint but she defended herself as best she could.

As well as speaking to the claimant about complaints in late June the respondent also spoke to her on 3 July 2009 and a further complaint was made on 4 July 2009 as the claimant was starting her two weeks holidays. These complaints included complaints of burns to the underarms and eyebrows. The respondent met with the claimant on 20 July 2009, on her return from holidays. At that meeting the respondent informed the claimant that she was dismissing her because of the numerous complaints she had received about her and presented her with the letter of dismissal at the meeting. The respondent had made the decision to dismiss the claimant on the day she had received the final complaint, on 4 July 2009. The respondent dismissed the claimant because of the numerous complaints about her, her failure to follow salon procedures and her lack of communication. The respondent's evidence was that a co-worker had informed the claimant before she had gone on holidays that the respondent wanted to speak to her on her return about a complaint received on 4 July.

The claimant's position was that she had met a co-worker before she had gone on holidays but the co-worker had not informed her about the final complaint or that she was to attend a meeting on her return. She had no prior notice of the meeting or of its purpose or nature. The claimant denied the respondent's assertion that she had offered her the opportunity to have her sister present at the meeting on 20 July. According to the claimant the purported complaint made on 4 July was made by a family friend who had contacted her about her reaction to a treatment and because the claimant herself would be on holidays she advised her to get a particular cream from the salon. That customer was not making a complaint but just requesting some cream.

In March 2009 one employee changed to working part-time hours and due to the recession the respondent asked the other members of staff to work 9.00am to 6.00pm alone one day a week. The claimant complained because she was unhappy about the long day and having no one to relieve her. The respondent agreed that there were days when no one relieved the claimant. The situation changed after about eight weeks.

Determination

The respondent's evidence was that she made the decision to dismiss the claimant on 4 July 2009

when she received the final complaint. In making the decision to dismiss the claimant without first affording her the opportunity to address the complaints was a breach of fair procedures and contrary to one of the basic principles of natural justice rendering the dismissal unfair. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds. The Tribunal awards the claimant the sum of €7,700.00 as just and equitable compensation under the Acts.

The claimant did not offer any evidence on the claim under the Organisation of Working Time Act 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)