

## EMPLOYMENT APPEALS TRIBUNAL

### CLAIM OF:

### CASE NO.

EMPLOYEE

- claimant

MN2396/09

UD2565/09

**against**

EMPLOYER

- respondent

**under**

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr. B. Kealy  
Mr C. Ryan

heard this claim at Naas on 6th April 2011.

### **Representation:**

Claimant: In person

Respondent: Mr. Michael Francis Forde BL, instructed by Mr. Christopher Grogan,  
C. Grogan & Co., Solicitors, Main Street, Clane, Co. Kildare

The determination of the Tribunal was as follows:-

### **Respondent's Case:**

The respondent was a hair salon. The owner (ER) owned the business for 20 years. The claimant initially worked a five-day week but this was reduced to a two to three day week due to a downturn in the economy. She was six months short of completing her apprenticeship when she had to be let go.

The claimant had not attended some training courses during her tenure, cancelled a class on one occasion and did not furnish any explanations for her absences. ER had a good relationship with the claimant and all employees.

Staff were invited to a meeting on 29 June 2009 and the financial situation was explained to them. The claimant was not present at this meeting. There was less income in the business. Profit

dropped from €18,823 to €6388 in one year. Overheads were very high and there was not enough cash to pay the wages. Two staff had to be let go (the claimant being one of them and employee M the other). Selection criteria used were training, expertise, years service and productivity.

On 28<sup>th</sup> August 2009 ER gave the claimant notice of the termination of her employment. The following day the claimant went on a week's holidays. ER told the claimant she would give her work if any work became available. B worked Saturdays and was engaged in sweeping the floor and also shampooing hair. ER did not offer the claimant this type of work, as she would not expect the claimant to return to sweeping the floor and shampooing hair. M was a qualified stylist and was re-employed a week later. He subsequently left his employment in March/April 2010.

E a first year full time apprentice continued to work a 40-hour week, five days a week and was paid a higher rate of pay than the claimant.

The claimant was furnished with her P45, a reference, and a letter to enable her to claim social welfare payments following the termination of her employment.

### **Claimant's Case:**

The claimant was an apprentice stylist and commenced employment on 21<sup>st</sup> March 2008. She initially worked a five-day week but this was subsequently reduced to a two to three day week.

On 18<sup>th</sup> August 2009 an altercation occurred between the claimant and stylist M in the salon in the presence of clients. The claimant reported the incident to her manager. Her manager spoke separately to the claimant and M. Her manager subsequently told the claimant that a written warning would have to be issued to her. On 21<sup>st</sup> August 2009 the respondent furnished her with that warning.

On 28<sup>th</sup> August 2009 ER informed the claimant that she was being let go, as she could no longer afford to employ her. The claimant was six months short of completing her apprenticeship. She asked if her hours of work could be cut back but was told no. Stylist M was let go at the same time but was ultimately re-employed.

The claimant contended that there was enough work to go around and the salon was still busy at the time she was let go. E who started working Saturdays was subsequently employed on a full time basis and earned more money than the claimant had earned during her tenure.

The claimant contended that her dismissal was unfair and was directly related to her being disciplined following the incident on 18<sup>th</sup> August 2009 in the salon. She did not receive her entitlement to one week's notice.

The claimant has applied for several positions since the termination of her employment but has been unsuccessful in securing work. She has been in receipt of social welfare payments.

### **Determination:**

The Tribunal carefully considered the evidence adduced at this hearing. The respondent at no time advised staff about the selection criteria used in selecting them for redundancy. The Tribunal notes that criteria used by the respondent were neither objective nor transparent.

The Tribunal finds that the claimant was unfairly dismissed and awards her €5000.00 under the Unfair Dismissals Acts, 1977 to 2007. The Tribunal also awards the claimant €178.60 being the equivalent of one week's pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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