EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:		CASE NO.
EMPLOYEE	*claimant*	RP3001/2009 UD2560/2009 MN2390/2009 WT1086/2009

Against

EMPLOYER *respondent*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr. A. O'Mara
Ms. E. Brezina

heard this claim at Dublin on 14th April 2011

Representation:

Claimant(s) Ms. Clare Dennehy, Citizens Information Centre, Luke Cullen House, Oakfield Industrial Esate, Clondalkin, Dublin 22

Respondent(s): Ms. Sorcha Finnegan, Kelly & Griffin, Solicitors, 77 Terenure Road North, Terenure, Dublin 6w

The determination of the Tribunal was as follows:-

At the outset of the hearing the claims under the Organisation of Working Time Act, 1997 and the Redundancy Payments Acts 1967 to 2007 were withdrawn.

Respondent's Case

The owner of the salon MS told the Tribunal that she had the business since 1997. She employed four initially and in 2002/2003 she employed six. Currently three including herself are employed.

While the claimant was at school she worked Saturdays in the salon undertaking sweeping and cleaning of the salon. The claimant did so well that she offered her a four-year apprenticeship. The claimant was a good worker, very obliging and got on well with the clients. She encouraged the claimant in her career. In May 2008 the claimant was behind in her training. She could not sign the certification of hairdressing if the claimant was not able to do everything in the salon. She provided the claimant with extra training courses to improve her confidence. In 2008 the business started to crumble. She tried to do better things for the clients but she had to reduce staff.

After a hairdresser completed his/her apprenticeship it took six to seven years before becoming a top stylist in any salon. A top stylist left the respondent and she asked the claimant to take on his duties. The claimant was willing to help out. In January 2009 the claimant wanted to buy a house and she asked her for a P60. The claimant wanted her to indicate that she was earning more money than she actually was. The respondent felt that the relationship went downhill after this. She could not give the claimant a false P60. The claimant asked her for a statement of earnings in Feb/ March 2009

She was twenty-three years in business and she had some clients since she first started. In October 2009 business was bad and a number of clients were not coming to the salon as frequently. She heard that the claimant was poaching her clients and was operating from her home. A supplier provided the hair salon with supplies. The claimant was waiting for her card from the supplier so that she could undertake hairdressing in her own home.

She dismissed the claimant on the 17th October 2009 as she was taking clients from the salon and doing their hair in her own house at a cheaper rate. It was the practice that you did not do your clients hair outside of work. A client told her that the claimant had approached clients and asked them if they wanted their hair done in the claimant's home.

Prior to this she gave the claimant verbal warnings. On the day she dismissed the claimant she asked the claimant if she wanted to say anything and she would have retained the claimant if she told her the truth. In the hairdressing industry it is normal practice that all hairdressers break their service. She did not have a contract of employment for the claimant and employees knew the rules. She did not give the claimant the names of the client as clients discussed confidential matters with her. If a client had hair done at home it affected all employees. She now has three employees and has contracts of employment in place. If she had to dismiss an employee she would now obtain legal advice before doing so.

In cross-examination she stated that the claimant was paid a basic wage plus 10% commission. The claimant was paid €70 per day and she was not given a pay slip. The claimant did not attend some hairdressing courses. When put to her that she would not pay her employees to go on courses as they could go to other salons she replied that she gave the claimant proper training over four years. She paid for the claimant's courses while the claimant was training.

She met with the claimant on 17th October after work. She did not give her a written warning, the respondent was a small company and the claimant was a colleague as well as a friend. She had given the claimant verbal warnings. The claimant was a great person and should still be employed in the salon.

The relationship between the claimant and the witness deteriorated after the claimant asked her for a false statement of earnings. After the break it was the plan that the claimant would return as a new employee. When put to her that she stated in a letter of dismissal that the claimant was not

reliable she replied the claimant was good. On occasion the claimant would ask other stylists to deal with clients. The claimant took her own clients to her home as well as the witnesses' clients. She told the claimant that she was to discontinue this. It was not true that she told the claimant her earnings were too high as a junior stylist.

AN on behalf of the respondent told the Tribunal she was a client of the respondent for seven years and she and her mother had their hair done in the salon. The day she got engaged she was in the salon and the claimant told her if she ever wanted her to go to her house she would do her hair for her.. AN was surprised and she told the claimant that it was nice to know this. She relayed this matter to the owner MS.

Claimant's Case

The claimant told the Tribunal that she commenced work in the salon while she was at school. She started her hairdressing apprenticeship after she completed her Leaving Certificate. She completed her apprenticeship in 2008. In May 2008 the owner MS told her that it would be better for her if she undertook work for some extra months before completing her apprenticeship. There was no conversation about the break in service. She was a full time junior stylist. She broke her service in October 2008. She was on holidays for four weeks and two weeks was at her own expense. In January/February 2008 she asked MS for a wage slip of her basic pay and she asked her to include commission as well. She earned commission every week.

She had certificates for two hairdressing courses she attended. She was out of the country on holidays and could not attend another course. The majority of clients did not have a problem with the stylist who did their hair. Certain clients had hairdressers they went to. MS announced at a meeting that clients were not coming to the salon.

On the day she was dismissed she was very busy and she did not have a break. .MS asked her to remain back after work and MS told her that the salon was not busy. MS did not mention anything to her about taking clients from her. She was dismissed as there was no work for her. She asked MS about redundancy. The claimant was shocked as she had been employed with the respondent for seven to eight years. MS told her she was bringing in the same clientele every week. She did not undertake hairdressing for clients from the salon in her home but she did so for friends. Clients asked her if she would do their hair at home but she did not. She did not approach clients in the supermarket.

Since she was dismissed she did hairdressing for her family and friends. While she was employed she collected MS's children from school. If an employee was absent through illness MS would ask her to report for duty. She could receive a call the previous night to report for work at 12 noon the next day. The employees got on very well with each other and if an employee was absent they worked as a team. She received her wages on Saturdays,

She registered with FAS and has an interview arranged with FAS for a childcare course.

In answer to questions from the Tribunal she stated that she never did clients hair in her home. She was 100% sure that she did not poach clients form the salon. She did hairdressing for her family and friends at home. She did not advertise openly for business at home. The same clients continue to go to her home to have their hair done since she was let go.

Determination

The Tribunal, having considered all of the oral and documentary evidence in this case, notes that there was a conflict between the two parties on the crucial issue as to whether the Claimant had been guilty of gross misconduct. In particular, the Respondent's contention that the Claimant had poached a number of the Respondent's clients was denied by the Claimant. The Claimant stated that she was dismissed because of a purported fall-off in the Respondent's business.

Regardless, the procedures used by the Respondent were in the opinion of the Tribunal, grossly deficient. No details of the complaint were furnished and no warnings were given to her. Furthermore, when she was invited to meet the Respondent's principal on 16th October 2009 shewas not told in advance that the meeting would be disciplinary in nature and that its outcome couldlead to her dismissal. In fairness to the Respondent's principal, she admitted in direct evidence thatthe procedures she followed were defective and she said that she would do things differently if shewas confronted with the same situation again.

The Tribunal finds that the dismissal was unfair. But it believes that the Claimant may have contributed to the difficulties, which gave rise to the termination of her employment.

Evidence of loss of earnings and of the Claimant's efforts to secure employment were considered by the Tribunal. In all of the circumstances, the Tribunal awards a sum of €5,000 in compensation under the Unfair Dismissals Acts 1977 to 2007.

The Tribunal notes that the Claimant was entitled to four weeks pay in lieu of notice of termination in accordance with the provision of the Minimum Notice and Terms of Employment Acts 1973 to 2005. There was a conflict of evidence in relation to whether the claimant had already received the equivalent of one week and one day. The respondent insisted that a sum of €260.00 was paid in cash on the 13th of November, 2009. This was denied by the claimant. In the circumstances the claimant is entitled to three weeks minimum notice in the amount of €544.76 which is equivalent to three weeks gross pay (€201.19 per week) less €58.81 which the claimant already received.

As the claims under the Redundancy Payments Acts 1967 to 2007 and the Organisation of Working Time Act, 1997 were withdrawn no awards are being made under these Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)