

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE – *claimant*

CASE NO.  
UD252/2010  
MN239/2010  
WT125/2010

against

EMPLOYER – *respondent*

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr C Corcoran BL

Members: Mr D Moore  
Mr P Trehy

heard this claim at Dublin on 18th April 2011

Representation:  
\_\_\_\_\_

Claimant(s): Ms Mary Fay BL, instructed by  
Ms Mairead Little  
M Little, Solicitors, 12a Kennelsfort Road Lower, Palmerstown, Dublin 20

Respondent(s): In person

The determination of the Tribunal was as follows:-

**Respondents Case:**

The respondent's husband gave evidence that a redundancy situation occurred in relation to the claimant's role. The claimant served food and operated the till. The respondent runs a small café with four employees. Sales were down and they suffered losses of €8,500 for the year ending 31<sup>st</sup> December 2008. The witness and his wife met with staff on April 29<sup>th</sup> and 30<sup>th</sup> 2009. They informed staff on April 30<sup>th</sup> 2009 that there would be a reduction in hours available.

On May 6<sup>th</sup> 2009 a member of staff gave notice that she intended to leave. Her role was waiting tables and trainee chef. They put an advertisement in the newspaper to replace her and received many applications. The claimant went on sick leave in mid June 2009. She remained on sick leave until the time of her dismissal in August 2009. They tried out some of the job applicants

during this time. The claimant submitted weekly medical certificates. When she submitted the second certificate personally they asked to speak to her but she didn't respond. Two local schools gave them a lot of their business. They wanted to tell her that business was down due to the school holidays. They adjusted the opening hours from 8am-5pm to 9am-4pm.

The claimant's sister brought the next two certificates for the claimant. They asked her to have the claimant contact them. The claimant did not contact them. They wanted to tell her that they didn't have any hours for her. They received a certificate on July 31<sup>st</sup> 2009, dated August 3<sup>rd</sup> 2009, which covered the period until August 17<sup>th</sup> 2009.

The witness and his wife had a holiday booked to begin on August 14<sup>th</sup> 2009. They had to get family members to help keep the business open. The claimant sent a text message on August 3<sup>rd</sup> 2009 stating that she would be fit to resume on August 25<sup>th</sup> 2009 and she requested her hours. They replied by asking the claimant to come in to speak to them but she said she was going on holidays for two weeks from the next day. They decided to terminate the claimant's employment due to the downturn in business. They notified her by way of a hand delivered letter on August 4<sup>th</sup> 2009.

During cross-examination the witness confirmed that his wife ran the business as a sole trader. He was a chef but he also supervised the employees with his wife. The business opened in September/October 2007. There are currently four employees and they still have a part-time employee who works for four hours every Saturday. The claimant's hours had increased after the previously mentioned employee left after the April meeting.

The claimant's medical certificate cited work related stress as the reason for her absence. He believed that the claimant was happy in her work. There was an incident over a bottle of water on June 19<sup>th</sup> 2009. The respondent queried whether it had been paid for. The claimant got upset and she asked her if she was alright. She seemed angry that someone had questioned her. He disputed that the claimant had been taken off working the till. He denied that he was verbally abusive to her. It was unusual that the claimant went on sick leave after her next shift. She had only been sick once before. They did not try to contact her except to ask her sister to ask the claimant to contact them.

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

The claimant gave evidence that her role involved waiting tables, operating the till and cleaning. Her employment began in September 2007. She contended that she did not receive the letter of dismissal until August 12<sup>th</sup> 2009.

After lunchtime on June 19<sup>th</sup> 2009 the respondent asked her about a bottle of water served to a customer. The claimant told her that another employee had served the customer. That employee later told her that the respondent had taken the money for the water from the tips. The respondent denied this. The respondent's husband then told the claimant to respect the respondent. He had heard that the claimant was saying things about the business which the claimant denied. The claimant told him that she had heard that she was accused of giving discounts to customers which she denied. He said he was uncomfortable working with her and sent her home at 3pm when she was due to work until 5pm.

The next day, June 20<sup>th</sup> 2009, the respondent asked to meet the claimant. The respondent was with her husband. She screamed at the claimant. She asked who had told her about giving discounts to

customers, but the claimant wouldn't say. She accused the claimant of bullying the part-time staff member. The claimant went back to work. Later when she went to sweep and mop the floor the respondent's husband told her it was too early so she emptied the mop bucket. Then he told her to mop the floor. The respondent told her that she wasn't allowed to operate the till anymore and that she couldn't take a cigarette break anymore. She was embarrassed by having to ask other people to operate the till in front of customers.

When she worked the following Tuesday no one spoke to her. She went to her doctor afterwards and got a medical certificate. She did not go to the café while on sick leave.

During cross-examination the claimant agreed that the tips had always been used to pay for unpaid items. At the time the claimant thought that the respondent had taken it from her tips from the day before, which were under the till. The claimant did not have a written contract of employment.

**Determination:**

The Tribunal heard contradictory evidence from the parties and on balance finds that the claimant was unfairly dismissed due to a lack of proper procedures. However, there was an element of contribution on the part of the claimant. Accordingly, the Tribunal awards the claimant €6,000 (sixthousand euro) under the Unfair Dismissals Acts.

The Tribunal awards the claimant €200 (two hundred euro) in respect of one week's pay under the Minimum Notice and Terms of Employment Acts.

As no evidence was adduced in regard to holiday pay the Tribunal dismisses the claim under the Organisation of Working Time Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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