

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE -*claimant*

UD844/2009

MN883/2009

WT373/2009

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

Members: Mr. W. O'Carroll

 Mr D. McEvoy

heard this claim at Tralee on 14th July 2010

Representation:

Claimant: Michael Dowling & Company, Solicitors,
Church Street, Tralee, Co Kerry

Respondent: No appearance or representation

The Tribunal is satisfied that the respondent was properly notified of the hearing.

Claimant's case:

The claimant commenced employment in the respondent's salon on 24 October 2007. She was ill at work on Friday, 31 October 2008 and the respondent allowed her to go home early. She was hospitalised the following day and discharged on Sunday, 2 November 2008. On Monday 3 November she went to her own doctor and she was given a medical certificate covering her absence from work until 10 November 2008. On the same day she received a text from the respondent asking her to attend the salon at 5.00pm. When she went to the salon the respondent did not want to see her medical certificates and told her that there was no job there for her and that the business was in the process of being sold. When she asked the respondent who was her new boss the respondent told her that it was none of her business. The claimant's baby was born on 19 February 2009. She did not know who the new owner was. She had not approached the new owner about her job or any job. As far as she was aware the salon was still operating.

Determination:

The Tribunal is satisfied that the respondent was properly on notice of the hearing. Based on the uncontested evidence of the claimant the Tribunal finds that the claimant was dismissed. As the respondent failed to appear and discharge the onus of proof that rests on the respondent under s.6 (6) of the Unfair Dismissal Acts, the Tribunal, applying s.6 (1) of the Acts, deems the dismissal to be unfair. Accordingly, the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds. The Tribunal unanimously finds that the claimant failed to mitigate her loss. In the circumstances, the Tribunal awards her the sum of €2,200.00 under the Acts.

The claim under the Minimum notice and Terms of Employment Acts, 1973 to 2005, succeeds and the Tribunal awards the claimant the sum of €550.00, this being one week's gross pay as compensation in lieu of notice.

No evidence having been adduced in this regard the claim under the Organisation of Working Time Act, 1997 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)