

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD676/2010

WT290/2010

MN638/2010

against  
EMPLOYER  
under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin  
Members: Mr. P. Casey  
Ms. P. Doyle

heard this claim at Cork on 24th May 2011

Representation:

Claimant:

Mr. Frank Nyhan, Frank Nyhan & Associates, Solicitors,  
11 Market Square, (Opposite Courthouse), Mallow, Co Cork

Respondent:

P.J. O'Driscoll & Sons, Solicitors, 73 South Mall, Cork

#### **Respondent's case**

There was one witness on behalf of the respondent and he was a manager (Hereinafter called DC).

The witness stated that, prior to the claimant being dismissed, there were four full time employees including him. The others were a Stud Groom, a General Cattle Man/farm Hand (Hereinafter called TD) and the claimant. The duties of the claimant were "general stud duties". DC stated that sales were down and that the owner of the respondent told him that he had to let two employees go. The owner told DC that these two people were TD and the claimant.

DC gave one week's notice to both of these and the claimant was given a choice as to whether she wished to work out the notice or leave straight away. The claimant decided to finish up that day but was paid to the end of the notice period, which was 21<sup>st</sup> October 2009.

However, subsequent to his decision to let two employees go, the owner informed DC to keep TD on as he needed someone to look after the cattle.

The claimant was issued with a written warning on 27<sup>th</sup> August 2009, regarding her failure to take instructions. DC said that it was very difficult for the claimant to take instructions and that she just would not do it his way. However he denied, when it was put to him, that he wanted to get rid of the claimant and that she had been replaced.

DC stated that, after the claimant was let go, the owner's family members covered her work. The respondent also took on casual workers while the mares were foaling.

### **Claimant's case**

The claimant commenced as an Assistant Stud Groom on 21<sup>st</sup> January 2008. In August 2009 TD was taken on to assist in general duties around the stud. The claimant and TD both did the same type of work, including looking after the cattle while calving.

The claimant gave account of incidents, which led to the written warning of 27<sup>th</sup> August 2009 and said that this was the first work related difference she had had with DC. After one of these incidents the claimant alleged that DC called to the apartment she stayed in on the stud and told her to look for another job.

According to the claimant business was good even though there was a decline in sales. She maintained that the reason for her dismissal was that DC wanted to get rid of her and that a genuine redundancy situation did not exist. The claimant stated that other people were now employed to carry out her duties albeit on a part time/casual basis.

### **Determination**

There was a clear conflict of evidence adduced by the parties. The witness for the respondent stated that there was a clear redundancy situation precipitated by a severe reduction in income. However the appellant disagreed with this and stated that while there had been a reduction in income it had not been severe. The respondent produced no documentary evidence of this reduction of income and the witness simply said that the owner told him that the claimant was to be made redundant because of a decline in business. The owner did not appear at the hearing and therefore did not give evidence.

Furthermore the claimant stated that another employee who had less service than she and did the same work as her was retained while she was made redundant. The claimant also stated that a seasonal worker carried out part of her duties after she had left.

Having considered the evidence adduced the majority of the Tribunal are not satisfied that the respondent adequately demonstrated that a genuine redundancy situation existed or that the claimant was fairly selected for redundancy.

Therefore on the balance of probabilities the majority find that the claimant was unfairly dismissed and determines that under the Unfair Dismissals Acts, 1977 to 2007 re-engagement, from a date five weeks after the date of this order, is the appropriate remedy in this case. The period from 22<sup>nd</sup> October 2009 to the date of re-engagement is to be treated a period of unpaid suspension, thereby

preserving the claimant's continuity of service.

In those circumstances a claim under the Minimum Notice And Terms Of Employment Acts, 1973 to 2005 does not arise.

The claimant stated that she had taken three days annual leave between 1<sup>st</sup> January 2009 and the date of her dismissal and was not paid in lieu of the balance of days due to her. The respondent failed to show that these days had been paid and therefore the Tribunal awards the claimant €1647.50 under the Organisation Of Working Time Act 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

