

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE – *claimant*

UD2559/2009

MN2389/2009

WT1085/2009

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. N. O'Carroll-Kelly BL

Members: Mr. W. Power
Mr. A. Butler

heard this claim in Wicklow on 19th July 2011

Representation:

Claimant: In Person

Respondent:

The determination of the Tribunal was as follows:-

Respondent's Case:

The respondent operated two shops, one in Wicklow, the other in Wexford. The claimant was employed in the shop in Wicklow from the 14th April 2008, until the 12th October 2009. Due to the downturn in the economy, the respondent was finding it increasingly difficult to meet the rent of the shop in Wicklow, and pay the wages of the claimant. She asked the claimant to take a pay cut in February 2009, and she agreed to this. The claimant came to her in October 2009, and informed her that she would be attending hospital and would be out on sick leave for three weeks. She told the claimant that it was possible that the shop would close down permanently during this period, which it did on the 22nd October 2009.

She went through the final payments for the claimant with her Accountant and wrote a cheque for same, which was given to the claimant. Unfortunately the cheque bounced, and the claimant and her husband came to the shop in Wexford and asked for the money. She gave them cash for the bounced cheque, and payment for the bank charge of the bounced cheque.

Claimant's Case:

On the 12th October 2009, the respondent came into the shop in Wicklow and told her that the shop was closing and she would have to let her go. The respondent asked for the keys to the shop and for her husband's telephone number so she could call him when her P45 was ready.

That night, she went home, made a list and worked out what monies she was due from the respondent. On the 15th October 2009, her husband dropped the list she had made into the respondent. Her husband contacted the respondent on a number of occasions looking for the P45 but was told it was not ready, or that the respondent would drop it into their home.

On the 26th October 2009, the respondent gave her husband a cheque. When she looked at the cheque, it was missing payment for one week's notice. The respondent told her that she was not due notice. She lodged the cheque into her bank account and it bounced. She went to the shop in Wexford and after a discussion she was given cash for the cheque and bank charge which she signed for.

Determination

The Tribunal having carefully considered the evidence adduced at the hearing finds that the claimant was dismissed by reason of redundancy even though the claimant had insufficient service to qualify for a redundancy lump sum payment.

The Tribunal is satisfied that the respondent business was struggling to survive and it proved necessary to close one of the shops, despite the best efforts of the respondent. The claimant was dismissed by reason of redundancy and her selection was not unfair. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail.

As the claimant signed for payments due to her, her claim under the Organisation of Working Time Act, 1997 also fails.

The Tribunal awards the sum of €346.00, this being one week's gross 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)