

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM(S) OF:**  
EMPLOYEE

**CASE NO.**  
– *claimant* UD613/2010

RP832/2010

MN555/2010

against

EMPLOYER

- *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr J. Goulding  
Ms M. Maher

heard this claim at Dublin on 21st June 2011  
and 19th September 2011

Representation:

Claimant: Mr Hugh Byrne BL instructed by Howard Synnott, Solicitors, Ballyowen Castle,  
Ballyowen Shopping Centre, Lucan, Co Dublin

Respondent: Mr Richard Grogan, Richard Grogan & Associates, Solicitors, 16 & 17 College  
Green, Dublin 2

The determination of the Tribunal was as follows:

Dismissal was in dispute the claimant gave her evidence first.

**Claimant's case**

The claimant gave direct sworn evidence she commenced employment in 1985 as a hairdresser and worked continuously until she was dismissed in January 2010. Her normal working week was three days, Tuesday, Thursday and Saturday.

Due to the wintry weather in January 2010 business was quiet as there was snow lying and there was no water. They previously had problem with the water supply but had always improvised. On the 9<sup>th</sup> January 2010 at lunch time the respondent explained to her that business was slow and informed her that she could not pay her anymore and that she would have to let her go. The respondent told her to ring the accountant (hereinafter referred to as AB) to get her P45 so she could claim social welfare.

The following Tuesday morning she called to the hair salon to collect her P45. One of her regular clients was there who commented to her that she had heard that the respondent had let her go. The respondent gave her the P45.

The respondent telephoned her on the 15<sup>th</sup> January 2010 and offered her Saturday work for cash in hand, the claimant refused.

On the 20<sup>th</sup> January 2010 the respondent telephoned her and asked her to meet for a coffee in a local hotel. At this meeting the respondent told her that she was going to run the business herself and in the claimant in turn told her about FAS.

She then received a letter from the respondent by registered post on the 8<sup>th</sup> February 2010. This letter was asking to confirm her resignation in writing; the claimant explained that she had never any discussion regarding her resignation with the respondent. The claimant engaged a solicitor who wrote to the respondent on her behalf stating that the respondent had terminated the employment. The claimant received a letter from the respondent on the 19<sup>th</sup> February 2010 which states "After receiving your letter I would like to clear a misunderstanding as your position of employment is still available and has been available for you since the 16<sup>th</sup> January 2010". It further explains that the claimant has to inform the respondent within seven days if she wishes to continue her employment or the respondent would have no choice to fill her position. The claimant could not believe it when she received this, as on the 20<sup>th</sup> January the respondent had informed her that she had no work for her.

The claimant gave evidence of loss

Under cross-examination she explained that the respondent always kept a five gallon drum of water, and that they had customers the morning she was laid off. She had not taken up her position again as on the 20<sup>th</sup> January 2010 the respondent had told her there was no job for her and she felt that the respondent wrote the letter of the 19<sup>th</sup> February 2010 to cover herself. She denied that she had been given the letter of "Saturday 9<sup>th</sup> 2010" addressed to "To Whom It May Concern" stating that the respondent had no other option than to request the claimant to sign on for social welfare. She reiterated that on the day she was let go she received no documentation from the respondent. She denied that she resigned from her employment on the 20<sup>th</sup> January 2010. On the following Tuesday she brought her P45 to social welfare to sign on.

In reply to questions from the Tribunal, she did not consider the letter offering her job back genuine, nor would she have resigned her position after 23 years of employment. The salon is still operating and her position was not replaced.

On the second day of the hearing the Tribunal heard additional evidence in rebuttal of the respondent's evidence. The claimant recalled the meeting of the 20<sup>th</sup> January 2010 where the respondent informed her that business was so bad she could barely keep the job going for

herself. She did not request her P 45 from the respondent.

### **Respondent's case**

On the first day of the hearing the respondent's representative applied for a witness summons for an official from the Department of Social Protection to bring the claimants file along to the hearing. The purpose of this was to establish whether the letter of "Saturday 9<sup>th</sup> 2010" was on her file as she would have needed some documentation from her employer to enable her to sign for social welfare payments.

On the second day of the hearing an official from the Department of Social Protection gave evidence. The claimant applied for job seekers allowance, the letter dated "Saturday 9<sup>th</sup> 2010" was not on the claimant's file.

The respondent gave direct sworn evidence. The claimant worked with her for 25 years and all was well between them. At the start of 2010 there was a bad freeze that affected the salons water supply. She had water in containers on the roof but these ran out also. As the week went on by Thursday they had no water at all, she brought in some water from home but they had very few clients coming in because of the bad weather.

She spoke with the bank and the Department of Social Protection. The Department informed her that she would have to give the claimant something in writing to allow her to sign on. The letter dated "Saturday 9<sup>th</sup> 2010" is what the Department told her to write. She spoke with the claimant on the Saturday morning and explained that they were in dire straits and asked her would she mind signing on for a while. The claimant understood the situation. She informed the claimant that she would have the letter for her on Tuesday morning; the claimant told her she had spoken with a friend and that she would also need her P45 to sign on. She texted her book keeper that evening and asked her to prepare the claimant's P45. She met with her book keeper on the Monday who provided her with the claimant's P45 and letter. She gave the claimant the letter and the P45 on the Tuesday morning in the salon.

At no time or on the 15<sup>th</sup> January 2010 did she ask the claimant to come and tell her that she would pay her cash in hand. The claimant was laid off temporarily while she got the water supply sorted.

She had continuously tried to telephone the claimant on the 14<sup>th</sup> January 2010 on her mobile and house phone but the claimant never answered her phone. Telephone records were produced in evidence. She eventually telephoned the claimant's partner who got the claimant to telephone her. She met with the claimant on the 20<sup>th</sup> January 2010 at the claimant's request. At this meeting the claimant informed her that after having the time off she had decided that she did not want to return to hairdressing and was looking at doing some FAS courses.

She was in disbelief when she received the solicitor's letter on the claimant's behalf stating that she had terminated the claimant's employment. At the meeting of the 20<sup>th</sup> January 2010 the claimant had told her that she wanted to resign her position. On foot of this letter she wrote directly to the claimant and had offered the claimant her job back. The claimant's job was still there, she did not replace the claimant as hairdressing is a personal thing and the claimant's clients have not come back to the salon since the claimant's departure. She did not dismiss or make the claimant redundant.

Under cross examination she explained that she had kept the salon opened during the bad freeze as

they had to be there to inform their regular clients of the situation. About five people had come in on the Saturday in question and they had to wash their hair by kettles of boiled water. The salon was closed Sunday and Monday and re-opened on the Tuesday. When the claimant came in to the salon on the Tuesday to pick up her P 45 one of the claimant's clients were there. She had at this stage arranged with the salon next door to use their water if her customers agreed.

The letter of the 8<sup>th</sup> February 2010 seeking written confirmation of the claimant's resignation was written by her book keeper. She had sent this to the claimant as she needed her resignation in writing as she had only temporarily laid off the claimant.

She received a text from the claimant on the 25<sup>th</sup> January 2010, the claimant wanted to come down to the salon and get her hair done. Witness explained that while the start of their meeting on the 20<sup>th</sup> January was amicable she did not respond to this text as the claimant had told her she had sought advice. After this meeting she did not want the claimant in the salon as she was up to something. She had not changed her mind about this when she wrote to the claimant on the 19<sup>th</sup> February 2010 offering her job back; it had been the claimant's decision to resign. On a personal basis she did not want the claimant back in the salon, however her job was always there. She had discovered after the meeting on the 20<sup>th</sup> January that the claimant had informed the Department of Social Protection that she had been sacked from her position. She denied that she had told the claimant at the meeting of the 20<sup>th</sup> January that she was unsure whether she would keep the salon going or not. The claimant's clients have not come in the salon since she had left.

## **Determination**

The claimant commenced employment in 1985 working three days per week. On the 9<sup>th</sup> January 2010 the respondent explained to the claimant that business was slow and informed her that she could not pay her anymore and that she would have to let her go. The respondent told her to phone the accountant to get her P45 so she could claim social welfare.

On the 20<sup>th</sup> January 2010 the respondent telephoned her and asked her to meet for a coffee in a local hotel. The meeting took place that same day. Virtually everything that happened at this meeting is in dispute apart from the fact that it took place. The respondent gave evidence that the claimant said at this meeting that she had enjoyed her time off, was too old for hairdressing and wanted to do something different. This was completely denied by the claimant who said that the respondent had said there was no work for her. The claimant gave evidence that she did not resign at this meeting.

The claimant received a letter, dated the 8<sup>th</sup> February 2010, from the respondent by registered post. This letter requested the claimant to confirm her resignation in writing. On the 12<sup>th</sup> February 2010 the claimant's solicitor wrote to the respondent stating that the respondent had terminated the claimant's employment. The respondent replied to this letter on the 19<sup>th</sup> February 2010 stating that "After receiving your letter I would like to clear a misunderstanding as your position of employment is still available and has been available for you since the 16<sup>th</sup> January 2010". It further explains that the claimant has to inform the respondent within seven days if she wishes to continue her employment or the respondent would have no choice but to fill her position. The claimant could not believe it when she received this, as on the 20<sup>th</sup> January the respondent had informed her that she had no work for her.

The Tribunal notes that on the 25<sup>th</sup> January 2010 the claimant sent a text to the respondent asking if

she could come down to have her hair done in the salon. The respondent gave evidence at the hearing that she did not reply to this text because she did not want the claimant near the salon as she “was up to something”. This view held by the respondent cannot be reconciled with the “job offer” to the claimant contained in the respondent’s letter of the 8<sup>th</sup> February 2010. If the respondent did not want the claimant to come to the salon to get her hair done it is inconceivable that she was prepared to offer her job back.

The Tribunal determines that there was a dismissal, whether it was on 9th January or the 20th January 2010, and that the respondent did not act as a reasonable employer would have acted having regard to all the circumstances. The employer is obliged to act reasonably. Indeed Section 5 of the Unfair Dismissals (Amendment) Act 1993 provides that the reasonableness of the employer’s conduct is now an essential factor to be considered in the context of all dismissals. Section 5, inter alia, stipulates that:

*“.....in determining if a dismissal is an unfair dismissal, regard may be had.....to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal”*

The Tribunal determines that the claimant was unfairly dismissed and deems compensation the most appropriate remedy and awards the claimant the sum of €18,000.00 under the Unfair Dismissals Acts 1977 to 2007. The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 succeeds and the Tribunal awards the claimant €2,400.00 being the equivalent of eight weeks pay. As remedies under the Redundancy Payments Acts 1967 to 2007 and the Unfair Dismissals Acts, 1977 to 2007 are mutually exclusive, the redundancy claim fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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