

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:
EMPLOYEE – *claimant*

CASE NOS:
UD910/2010
RP1224/2010
MN862/2010

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. M. O'Connell
Members: Mr. P. Pierce
Mr. G. Whyte

heard this appeal at Dublin on 22nd November 2011

Representation:

Appellant: In person

Respondent: Mr. Paul Ferris of Paul A. Ferris & Co. Solicitors,
Suite 227, The Capel Building, Mary's Abbey, Capel Street,
Dublin 7

The decision of the Tribunal was as follows:

Claimant's Case

The claimant gave evidence. She had worked looking after toddlers in the crèche. She had a good relationship with the respondent at the start.

There were problems from about August 2009. Post was not being dealt with and queries from parents seeking information were left for staff members. From this time the claimant was not paid in full. A cheque she received bounced and the bank told her that the account had been cleared. She secured a Rights Commissioner's recommendation awarding her 6 week's pay.

There were no meetings to discuss the situation. Her colleague gave notice to the respondent the day before the business closed. Her colleague intended to work her

notice. The claimant did not tell the respondent that she was leaving.

The claimant was not given notice that the crèche would close. Her colleague phoned her at about 7.00pm and told her that it would not open the following morning. Parents and staff arrived on the morning of 8th October 2009 to find a note on the door. The parents had to go to work and had paid for the month in advance. The claimant did not contact the press.

Respondent's Case

The respondent gave evidence. She took over from her sister in August at a time when the business was not going well. The numbers had dwindled; there were staff problems and other things going on.

From the start the respondent cracked the whip. She came from a more regimented way of working. She invested her redundancy payment in the business. In September the business was chugging along. She was not making any money and she was often late in paying bills. She did not pay the claimant because she did not have the money.

When the claimant's colleague gave her notice, the appellant decided to leave too. The business was being run by her and three staff. As a result of two staff deciding to leave the respondent could not open the following day. She phoned the staff and informed the parents. The respondent did not show up at the premises the following day because she felt that there was no need. Businesses close every day.

Determination:

The Tribunal heard conflicting evidence on the circumstances of the termination of the claimant's employment. The claimant believed that the respondent's business was closed suddenly and without proper notice to staff. The respondent denied this, saying instead, that the crèche was forced to close as a result of an orchestrated move on the part of staff.

The Tribunal prefers the evidence of the claimant and in the circumstances finds that the termination of her employment amounted to an unfair dismissal. The claimant secured alternative employment but at a reduced level of pay. The claimant is awarded €5000.00 under the Unfair Dismissals Acts 1977 to 2007.

The Tribunal notes that the Rights Commissioner's award for wages was still outstanding at the date of the hearing 2 years after the award was made.

The claimant is awarded the sum of €583.38 under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The claim under the Redundancy Payments Acts, 1967 to 2007 is dismissed.

Sealed with the seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)