

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:

**CASE NO.**

EMPLOYEE - *Claimant*      UD1691/2010

RP2273/2010  
MN1645/2010  
WT757/2010

Against

EMPLOYER – *Respondent 1*

EMPLOYER – *Respondent 2*

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**REDUNDANCY PAYMENTS ACTS, 1967 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: Mr K. Buckley  
Members: Mr D. Hegarty  
              Ms H. Kelleher

heard this claim at Cork on 16th February 2012

Representation:

Claimant(s) : John L Keane & Son, Solicitors, Youghal, Co Cork

Respondent(s) : In Person

**Respondents Case**

The Tribunal were told by CO'B the first named respondent that she was the employer in this case. CO'B gave evidence of commencing running the store on the 24<sup>th</sup> March 2009 when she took over the lease from the previous existing business. At the time she took on all the staff and informed them they were all temporary. She said she had no real knowledge of employee entitlements and relied on her Accountant for that side of the business. She also took advice

from her Dad the second named respondent on the day to day running of the business. Nine staff in total transferred when she commenced running the business including the claimant. She accepted that the claimant was employed at the business since October 2004. She told the Tribunal how she got a call from a friend of the claimant in May 2009 informing her that the claimant was admitted to hospital and would be undergoing surgery. She recalled a few days later she visited the claimant in hospital and gave her an extra weeks pay and told her to contact her when she was feeling better.

CO'B said she never received a medical certificate from the claimant during the entire period she was out but did accept the claimant was seriously ill. She had no other contact with the claimant until meeting socially at a birthday party and again at the Christmas party in December 2009. She said on both occasions we briefly discussed the claimant returning to work when she felt well enough. The respondent said that on the 16 April 2010 the claimant came into the shop to discuss returning to work indicating she would like to work three days per week. She told the claimant that she could offer her a choice of the early morning 6:30am shift or the evening shift to close at 9pm. The claimant said that with her distance to work those shifts were not suitable. It was during a busy time in the shop and she asked the claimant to contact her at the weekend. She told the Tribunal that was the last contact she had from the claimant.

In October 2010 as the business had declined she decided to terminate the lease and informed all of the staff. At the time she had six employees in total and all were kept on by the new leaseholder except one which she made redundant and paid her redundancy.

The respondent could not recall speaking with the daughter of the claimant or the claimants daughter being present for any discussion regarding the claimants return to work. She accepted she never requested medical certificates from the claimant and to her knowledge the claimant was coming back to work when well enough.

The second named respondent told the Tribunal that he was never aware of any request by the claimant for her P45 and P60. The claimant was not dismissed and it was assumed she was out on sick leave. He confirmed that no medical certificates were received or requested from the claimant and no resumption certificate was received. He understood that the accountant for the business had sent any necessary documentation to the claimant as the accountant had dealt with all the wages, deductions and redundancy payments for other employees.

### **Claimants Case**

The claimant gave evidence of working forty hours per week from 9am to 5pm five days per week. She told how the first named respondent took over the lease of the business in March 2009. She had surgery in May 2009 and while recovering she dropped in to the shop in June and was told she could come back when she was ready. The claimant recalled meeting the first named respondent at two social occasions where she was told to take her time and come back when she was fully recovered. The respondent never sought medical certificates at any stage.

She told the Tribunal she called to the shop on the evening of 16 April 2010 during a quiet period and informed the first named respondent she was now fit to return to work. She said she was not offered any shifts on that day and told that things were quiet and there was nothing for her at the moment. She was told by the respondent that she would get back to her on the matter however she received no communication following that day. She told the Tribunal she attempted to telephone the respondent twice but got no response. She now understood her job

was gone.

When asked why she had taken six months to request her P45 she explained that it was her understanding it would have automatically issued.

### **Determination**

The Tribunal accepted that this was a difficult case. However on balance, the Tribunal is satisfied that the Claimant was not dismissed either unfairly or otherwise.

It was the Tribunal's view that the Claimant had indicated to her employer that she was ready to return to work in April of 2010. It was the Tribunal's view that the hours offered to the Claimant were less convenient to her as, due to the downturn, a shift system had been introduced in the work place during the period that the Claimant was out of work while she was recovering from a serious illness.

The Tribunal found it difficult to accept that the Claimant interpreted that there was no job available for her in April 2010. The Tribunal noted that if this was the case that the Claimant did not request her P.45 or indeed a redundancy payment at that stage. The Tribunal felt that the immediate reaction of somebody losing their job would be to ask for a P 45 and a redundancy payment. The Tribunal preferred the Respondent's version of events in this regard. Accordingly, the Claimant's claim under the Redundancy Payment Acts and Unfair Dismissals Acts fails.

The Claimant did not dispute the fact that she had been paid a week's wages while hospitalised and her claim under the Minimum Notice and Terms of Employment Act fails.

No evidence was offered by the Claimant in relation to the Organisation of Working Time Act and the claim in relation to same also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

