

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE – *claimant*

CASE NOS:
UD911/2010
MN863/2010
WT27/2012

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: 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 enjoyed her job. Pretty much from the start she had problems getting paid. Suppliers also called looking for payments. It was obvious that there were financial problems.

She felt that she could not have been more flexible. She had a set of keys and often opened up and locked up.

The claimant told the respondent when she was offered another job. She told the respondent that she would work three and a half weeks’ notice. She worked until close of business. Later that evening, at about 7.50pm, she got a text message saying the business had closed. Before that there was no indication that the business would close.

The following day she went to the crèche. Many parents and children turned up. The claimant did not contact the media.

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 gave her notice she said that she would not come to work the following day. The claimant said that she would leave immediately as she was owed 3 weeks holiday pay. The claimant's colleague said she was leaving 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:

There was a conflict in the evidence surrounding the circumstances of the termination of the claimant's employment. The claimant told the Tribunal that she tendered her resignation on 8th October 2009 and that she intended to work 3 weeks' notice. The respondent accepted that the claimant resigned but insisted that she said that she would not work out her notice as she was owed holiday pay. The Tribunal prefers the evidence of the claimant, although it accepts she was not dismissed from her employment within the meaning of the Unfair Dismissals Acts. But the Tribunal also accepts that she intended to work out her notice.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 succeeds and the claimant is awarded the sum of €373.84.

The claim for 2 weeks' holiday pay under the Organisation of Working Time Act 1997 succeeds and the claimant is awarded the sum of €737.68.

The Tribunal notes that by the hearing date the sum of €1543.04 relating to unpaid wages awarded by the Rights Commissioner to the claimant had not been paid.

Sealed with the seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)