

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE - claimant

UD226/11
MN227/11
WT60/11

Against

EMPLOYER - respondent

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms F. Crawford B.L.

Members: Mr F. Cunneen
Mr. J. Dorney

heard this claim at Dublin on 25th May 2012.

Representation:

Claimant: Ms Sarah Hillery BL, instructed by MF Newman, Solicitors, 8 South Great George's Street, Dublin 2

Respondent: Mr. John Barry, Management Support Services (Ireland) Limited, The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:-

At the outset of the hearing the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act 1997 were withdrawn.

Respondent's Case:

The respondent is a bakery located on the south side of Dublin. SC is Director. He had expectations for the bakery and invested substantial money in the bakery. He moved the bakery to the North side of the city. He renovated the shop in the south side and his intention was that the claimant would run the business on the south side and he would offer her a full time role as Manager. The claimant had initially worked part time for the respondent.

The new shop opened in October 2009 and the claimant accepted her role as Manager. Turnover returned to what it was before the renovations. There was always a drop in sales during the summer months but business did not pick up in the autumn months.

Following SC's return from holidays in late October/early November 2010 his Accountant presented him with the company accounts. There was a 40% drop in profits. SC took the decision that he would have to reduce wages. He looked at ways of reducing hours. He spoke to the claimant and asked the claimant if she would get in behind the counter and work eight hours per day there. In hindsight, SC contended that the claimant did not appear to grasp what she was saying. He left his proposal with her for a week or so.

In the following week or so SC believed that the claimant was not going to work behind the counter. He made the decision that he would have to let her go. On 23 November 2010 when he relayed this to the claimant she responded 'Is that it'? He told her that he would pay her in lieu of notice and that she was to finish up that day. He subsequently took on the claimant's duties. He never employed a new manager.

Claimant's Case:

The claimant commenced employment in a part time capacity in March 2009. She worked in the afternoons. She worked mornings with another employer. The respondent was extremely happy with the progress of sales. After a few months SC decided to renovate the shop and on completion he offered the claimant the position of manager in a full time capacity. There was agreement that she would be paid €600.00 per week.

The claimant had a very good working relationship with SC and contended that she was a valued employee. Her duties entailed rostering staff, dealing with customers and suppliers and the floats for each day. She spent most of her time in the showroom.

The cash sales for the wedding cakes were lodged separately and the respondent looked after these.

The claimant contended that winter time sales remained the same and December was their busiest month.

In SC's absence on holidays the claimant took on extra duties.

On 17th and 18th November 2010 SC spoke to her about the financial difficulties the company was experiencing. The claimant did not see a fall off in sales. SC told her she would have to spend four hours behind the counter in the mornings and likewise in the afternoons. She asked him when he expected her to commence this but he said it was not for a few weeks. In her mind she thought that he might be taking over her role.

On Tuesday, 24th November 2010 SC asked the claimant to come into his office. He informed her that he had to let her go. The claimant was not expecting this and was completely shocked. As she was a valued member of staff it did not make sense to her that she was being let go. There were no previous discussions about her being let go. She would willingly have worked behind the counter as SC had suggested. The claimant enquired why she was being let go and SC contended that he could not afford to pay her wages. The following Friday she collected her

wages together with a reference and a letter of explanation as to why her employment was terminated.

The claimant enjoyed her job very much.

Since the termination of the claimant's employment she made strenuous efforts to secure alternative work. She completed a computer course. In March 2012 she secured a few hours work with a marketing company doing promotional work.

She frequented the shop after her dismissal and noticed that a new member of staff had been recruited.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal noted with concern that the claimant did not have a contract of employment. Clearly there was a lack of procedures and the claimant was not notified in advance that her job was in jeopardy. The Tribunal is satisfied that there was no contributing factor or behaviour on the part of the claimant in relation to her dismissal.

The Tribunal is satisfied that the claimant was unfairly dismissed. The claimant sought re-engagement. The Tribunal in assessing the remedy is of the view that re-engagement of the claimant would be unrealistic in the circumstances. Therefore, the Tribunal awards the claimant €42,500.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)