

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.  
UD1905/2010  
MN1850/2010

EMPLOYEE

against

EMPLOYER (Respondent A)

EMPLOYER (Respondent B)

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. J. Lucey

Members: Mr. J. Hennessy  
Mr. F. Dorgan

heard this claim at Clonmel on 29th May 2012

#### Representation:

Claimant: Mr. Peter T Reilly, James Reilly & Son, Solicitors, 4  
Brighton Place, Clonmel, Co Tipperary

Respondent: Mr. John Spencer, John M Spencer, Solicitor, Cudville,  
Nenagh, Co Tipperary

#### Background:

There are two named respondents in this case respondent A and respondent B, both are referred to as such and also as the respondents. Both respondents are in the same ownership.

#### **Claimant's case:**

The Tribunal heard evidence from the claimant. She commenced working with the respondent in October 2007. She worked in the office and at the kiosk where the sales are made for a satellite television brand. The kiosk and office were in the respondent's home initially and they then moved the kiosk and office to another address outside of the family home. Her basic pay was €173.00 plus family income supplement of €106.00, plus lone parent allowance.

She went on maternity leave on 10<sup>th</sup> July 2009. She had spoken to her cousin (hereafter known as AM) asked about the vacancy for her job (that was to arise because she was going on maternity leave). The respondent hired AM and she worked the claimant's hours. The claimant returned from maternity leave on 07<sup>th</sup> January 2010. There was no work because of the bad weather. At some point in time she spoke to the respondent owners. They told her that they were starting another new company (respondent B) and she would be transferred to the new company.

She commenced in the new company. Both companies operated from the same office and were separated by a door. A new system had been implemented in the respondent A company and AH operated the new system. It was not the case that the claimant returned to respondent A,

but she was still employed in respondent A company because respondent B had not been fully set-up. She did the work for respondent B company and this work was significantly different than the other work. The work entailed cold calling customers and she found it hard as most people were not interested in the product.

She was told that if she did not have sufficient hours in her new work i.e. 20 hours that they would offset it by giving her hours with the respondent A company.

At some point in time (KM) one of the owners of the respondents' phoned her and said they had no work for her temporarily. She asked for a letter for the Department of Social Protection.

**Respondents' case:**

The Tribunal heard evidence from the respondents. He confirmed the title of the respondent. He is a Television installer and is a sole trader along with his wife. He confirmed that the claimant worked for respondent B for a few weeks after her return from maternity leave. He had set up a new company and the claimant was asked to work there.

The claimant was asked if she wanted a new job and they interviewed her for the job. The claimant accepted the job at the interview. He was one hundred per cent satisfied that the claimant opted to become an employee of that company. The advantage for the claimant was that she would be in charge of the office and the job appealed to her. If she wished to remain in the first company i.e. respondent A then she could have stayed and AH would have been offered the job in respondent B. The claimant was given first choice of refusal of the job in respondent B.

Then there was a downturn in the economy and they could not sustain the new company. In or around April he told her that she would not have work for a few weeks. The claimant wanted a letter for the Department of Social Protection. He told her that was no problem and to ask AH for the letter. He did not have any input into the letter and he did not sign the letter. Regarding another letter his wife might have signed it on his behalf.

The claimant's employment did not end on 06<sup>th</sup> April. She was not dismissed by respondent A or by respondent B.

In cross-examination the witness explained that the claimant never returned to work when they asked her to. They contacted her in a text message. They wanted her to work. The witness was shown a document that was sent to the Department of Social Protection which asserted that there was no work for the claimant and he explained that the box must have been ticked in error.

The Tribunal heard evidence from the owners wife (TM). She told the Tribunal that she did not recall the document. It did seem like she signed it but she does not remember.

The Tribunal heard evidence from a witness who stated that the claimant was interviewed for the job in respondent B. he was not of the impression that the claimant was being transferred.

**Determination:**

Under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, the Tribunal awards the claimant the sum of €346.00, as compensation in lieu of notice.

**Determination:**

The Tribunal having heard all of the evidence adduced are unanimous in that the claimant was unfairly dismissed. The Tribunal determines compensation to be the most appropriate remedy in this case.

Accordingly, having regard to all the circumstances the Tribunal awards the claimant the sum of €15,000.00, under the Unfair Dismissals Acts, 1977 To 2007,

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

