

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER

UD1881/2011

against the recommendation of the Rights Commissioner in the case of:  
EMPLOYEE under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr T. Taaffe  
Members: Mr G. Mc Auliffe  
Ms M. Mulcahy

heard this appeal at Dublin on 16th April 2013

Representation:

Appellant:

Respondent:

**This case came to the Tribunal by way of an appeal by the employer against the decision of the Rights Commissioner r-105238-ud-11/SR.**

#### **Respondent's case**

There was no appearance by the respondent (employee) at the hearing. Her representative applied to have the matter adjourned on the grounds that the respondent could not afford to travel from her homeland to Ireland at the date of the hearing.

The Tribunal refused this application as the respondent had received ample notification of the hearing.

#### **Appellant's case**

A director of the company (MM) gave evidence to the Tribunal. MM arrived at the shop in which the respondent was employed on 19<sup>th</sup> December 2010 and observed that the shop seemed to be closed. However she discovered that the shop was in fact open to business but the front door was closed but unlocked. The front door was required to be kept opened while the shop was open to business and MM placed a wedge under the door to keep it opened. The respondent complained that it was too cold to keep the door open but MM told her that it had to be kept open to facilitate wheelchair users, a high number of whom were customers. Photos of the shop

and front door together with photos of the ceiling mounted heating system were submitted to the Tribunal. It was the contention of MM that the counter at which the respondent was normally situated was so far from the door and so well heated by the overhead heater that the fact that the door was kept open was of no ill consequence.

MM had not received any previous complaints from the respondent. It was alleged by the respondent's representative that allegations of bullying were made by the respondent but MM stated that she was unaware of any such allegations having been made.

The respondent was told that she could go home if she wished on the 19<sup>th</sup> December 2010 but she chose to remain in work until the close of business. However she never returned to work after that despite the company writing to her telling her that it was still open to her to return to work.

### **Determination**

The Tribunal considered the evidence adduced. The appeal is a hearing "de novo". In a claim for constructive dismissal it is for a claimant to establish that he/she had no alternative but to resign and therefore was unfairly dismissed.

It is found that the respondent failed to establish that she was unfairly dismissed. Therefore the employers appeal against the Rights Commissioners decision r-105238-ud-11/SR under the unfair Dismissals Acts, 1977 to 2007 succeeds and the Tribunal determines that the respondent was not unfairly dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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