EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF: CASE NO.

EMPLOYEE – **Claimant** UD1218/2011
MN1310/2011
WT500/2011

against

EMPLOYER - **Respondent**

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: Ms K.T. O'Mahony BL

Members: Mr D. Hegarty
Mr J. Flavin

heard these claims at Cork on 13 November 2012
and 22 April 2013

Representation:

Claimant:

Respondent:

The determination of the Tribunal was as follows:

The claimant was employed as a hair stylist in the respondent's salon in a shopping centre (thecentre) from 3 June 2009. The employment was uneventful, with the claimant working three eighthour days a week, Thursday to Saturday, until she went out sick from 8 December 2009 as a resultof a problem with her pregnancy. Thereafter the claimant was on maternity leave until 2 September2010.

Prior to her return from maternity leave the claimant sought to return to work on two twelve-hour days, Thursday and Friday. The respondent declined this request as Saturday is the busiest day in the salon and the hours being sought would breach the provisions of the Organisation of Working Time Act in regard to rest breaks.

On Thursday 23 September 2010 the claimant had a problem in regard to baby-sitting and the

respondent facilitated her by allowing her to finish at 4.00pm as against her normal finishing time of 6-00pm. The claimant's position was that this was an on-going concession until her baby sitting problems were resolved whereas the respondent's position was that this was meant to be a once-off event.

The claimant was ill on 30 September 2010 but went in to work on Friday as a client had an appointment for her wedding but she had to go home ill at around mid-day and was out sick on Saturday. On the following Tuesday, 5 October 2010, the claimant phoned the salon from the UK and informed the receptionist that her son had an ear infection and she would not be able to fly back from the UK as arranged and would not be able to attend work on Thursday or Friday 7&8 October 2010. The claimant asked to take these days as annual leave and to have her wages paid into her bank account. The respondent did not comply with her request, as holidays have to be pre-booked. On her return to work the following Thursday, 14 October, the claimant approached the respondent about this in a coffee shop in the centre. As regards this incident it was the respondent's position that the claimant had approached him in an aggressive and confrontational manner while he waswith his fourteen-year old son in the coffee shop and that he explained to her that holidays have tobe booked in advance for roster purposes. The claimant's position was that she also asked on 14October about her accrued maternity holiday pay entitlement and that the respondent indicated thathe would get back to her about it. She denied being either aggressive or confrontational. OnSaturday 16 October 2010 she attempted to raise the issue again in the mall in the centre and askedhim, why he was so nasty to her. The claimant's position was that the respondent's son was notpresent with him when she approached him

The respondent became concerned about the claimant's assertion that he was being nasty to her and in a letter dated 21 October 2010 he outlined his concerns to the claimant about the abovementioned issues, her attendance and her attitude to him (as her employer) and issued her with a letter of warning for her inappropriate behaviour. The claimant wrote to the respondent on 25 October 2010 appealing the verbal warning and asserting that the respondent had overreacted.

On Friday 29 October 2010 the claimant's husband brought their two children to the salon at 5.00pm and left them in the staff room until the claimant took them home at 6.00pm. The staff supervised the children.

On 5 November the respondent prepared a further warning letter for the claimant wherein re-asserted his version of events between them, and indicated that he had sent the letter of 25 October because 'you weren't hearing what you wanted to hear', he could not accept that wanting the claimant to work h er normal shift was being nasty and that he considered her action in confronting him on the mall to constitute a breach of the respect necessary in the employer employee relationship. The respondent further stated, "[I]n all my twenty years working with many mothers, never has any employee brought their children to work." His position was that it raises health and safety issues as well as being unfair to other staff. However, the respondent did not present this letter to the claimant at this time.

The claimant's children were again brought to the salon the following Friday, 5 November 2010.There was an agitated conversation between the claimant and the respondent when the respondentasked the claimant to take her children home.

It was the two events of the claimant's children being brought to the salon that brought to the respondent's attention that the claimant was still experiencing baby-sitting difficulties which hadresulted in the claimant leaving early on three other occasions since 23 September.

On 10 November 2010 the respondent issued the claimant with a letter giving her two weeks' notice of her dismissal, as well as the letter dated 5 November 2010.

Determination:

An employee is entitled to the benefit of fair procedures before an employer makes the decision to dismiss her. It is well established in law that fair procedures comprise at a minimum the employee's right to be informed of the allegations against her, that she be afforded the opportunity to prepare her defence and be warned that her job was at risk. The Tribunal is satisfied that fair procedures were not applied in this case. Accordingly, the dismissal was unfair.

Having considered the evidence the Tribunal is satisfied that the claimant made a significant contribution to her dismissal. Having taken that contribution into account, the Tribunal measures the award under the Unfair Dismissals Acts, 1977 to 2007 at €5,500-00.

The evidence having shown that the claimant received in excess of her statutory entitlement to notice the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 must fail.

The Organisation of Working Time Act provides at Section 25 a requirement for an employer to keep for three years, records to show that the provisions of the Act are being complied with. In the event of a dispute the onus lies with the employer. The breakdown of wages, holidays, maternity leave relied on by the respondent does not meet the requirements of Section 25. In these circumstances the Tribunal awards €655-60, being the pay owing in respect of eight public holidays from Christmas Day 2009 until August Public Holiday 2010, under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)