

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

-claimant

CASE NO.
UD359/2012

against
EMPLOYER *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly B.L.

Members: Mr. E. Handley
Mr J. Maher

heard this appeal at Cavan on 28th May 2013

Representation:

Appellant: In Person

Respondent: In Person

Respondent's Case

The respondent is a hairdressing salon. The respondent purchased the business in 2009. The claimant had been employed by the previous owner and after an interview she was retained as an employee. The claimant was offered and signed a fixed-term contract of employment with the respondent in November 2009 which stated, *'I particularly draw your attention to the fact that there is a probation period of 6 months.'*

In November 2010 the claimant was offered a new contract of employment on a fixed-term basis. The contract was to commence on the 3rd of November 2010 and finish in November 2011. The claimant went on Maternity leave in October 2011. The respondent did not write to the claimant on the expiry of the contract in November 2011. The respondent acceded to the claimants requested to return early from Maternity Leave in January 2012.

The claimant was offered an additional fixed-term contract on her return on the 4th of January 2012. It was explained to the claimant that due to the severe decrease in business and the economic climate the respondent was operating in, they could only offer her a 3-month contract. The claimant refused to sign this contract and as a result her employment terminated. The claimant requested a letter stating her employment was terminated. The respondent disputes that the claimant did any mangers duties or was paid additional €75.00 'cash' for them. The claimant did not earn commission for her work.

Claimant's Case

The claimant worked for the original owners of the respondent business from 2007. She was informed by the original owners that when buyers were found they would stipulate that, subject to interview the claimant would be retained in employment. After a successful interview the claimant signed the contract of employment dated the 3rd of November 2009. The claimant does not recall signing the additional contract in 2010 but does not dispute that it is her signature. As far as she was concerned she was and always had been employed in a permanent indefinite position. The claimant received an additional €75.00 per week for 'manager's duties.' She also received 12.5% commission for her work after a certain amount.

The claimant requested to return early from Maternity Leave as she felt her job was in jeopardy. On her return she was given 2 weeks to sign a new 3-month contract. She was also informed that she would no longer be paid the €75.00 'cash' and would have to do additional work before she earned commission. The claimant sought independent legal advice and as a result refused to sign the new contract. When she informed the respondent that she would not sign the new contract she was informed that consequently she no longer worked there.

Determination

The Tribunal are satisfied that a transfer of undertakings took place as prescribed in the Act between the original business owners and the respondent. The alleged fixed-term contract of November 2009 does not comply with statutory requirements, although it specifies a trial period it further states that, '*your employment will commence on the 3rd of November 2009 and run until further notice.*' On the basis that the contract does not comply with statutory requirements, the claimant continued in her employment on a permanent basis under the Transfer of Undertakings legislation. Consequently the contract of November 2010, whether it was or was not signed was irrelevant. Following the claimant's refusal to sign the contract in January 2012 the respondent affectively dismissed the claimant from her employment.

The Tribunal find that the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and award the claimant €5,000.00 in compensation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)