

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE (*claimant*)

UD602/2010

Against

EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms D. Donovan

Members: Mr. R. Prole  
Ms M. Mulcahy

heard this claim at Dublin on 24th June 2011

Representation:

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Claimant(s) :

Mr Michael Corcoran, 3 Kilmore Close, Artane, Dublin 5

Respondent(s) :

Paul A. Ferris & Co., Solicitors, Suite 227, The Capel  
Building, Mary's Abbey, Capel Street, Dublin 7

The determination of the Tribunal was as follows:

### **Respondent' case**

The owner stated that the company operated a school contract catering service and the claimant was employed as the Catering Manager. The claimant was told she was employed on a fixed term contract for the school year on a salary of €30,000 per annum. A contract was provided to the claimant five weeks after her commencement. A signed copy was never returned to the respondent. At the end of the first year the respondent had to let two girls go in May 2009. The respondent spoke with the claimant about not meeting company targets. At the end of the first term the contract ended in May 2009 and the claimant's P45 was issued by the accountant. At the end of August the claimant telephoned the respondent about returning to work. Between August and December 2009 the respondent told the claimant the business was under pressure. The respondent

spoke with the claimant about a cut in pay to €330 per week. The claimant said she was not having that and that she was “out of here”. This happened on the Tuesday before 21<sup>st</sup> December 2009. The respondent told the claimant to ring him Thursday. The respondent rang the claimant on Friday and she said she could not work for that money.

Under cross-examination, it was put to the respondent that the temporary employment contract bears no resemblance to the original contract received by the claimant. The respondent stated that it represented the contract given to the claimant. The respondent denied that the claimant did not receive payslips.

It was put to the respondent that the trouble started when the claimant went to Revenue in relation to tax and to social welfare in relation to PRSI. The claimant had also been asking about her contract of employment. There was also an incident in relation to driving insurance when the claimant was stopped by the Gardai in October 2009. As a result the claimant told the respondent that she no longer wanted to drive the van in future.

The respondent denied that he told the claimant on 15<sup>th</sup> December 2009 that if she would not agree to a pay reduction then she could leave the following Friday 18<sup>th</sup> December 2009. The claimant attended work on the 18<sup>th</sup> December 2009. In relation to the deduction of €200 in her pay cheque, the respondent stated that he could not afford to pay her the usual amount due.

The respondent confirmed that he was not present at the claimant’s dismissal on 21<sup>st</sup> December 2009. He was aware that the Gardai had been called to the premises. The respondent was not aware that the claimant was requested to give her resignation in writing on the 21<sup>st</sup> December until his wife told him.

In reply to the Tribunal, the respondent confirmed that the temporary contract given to the claimant after she commenced covered the school year from 1<sup>st</sup> September 2008 until 31<sup>st</sup> May 2009. The claimant was paid her holiday pay and was paid from September to June rather than a twelve month period. The claimant was told if the school renewed the contract she would have a job with the respondent. The respondent now provides payslips but these were not available to the Tribunal on the day of hearing. Staff numbers have been reduced from five employees to three.

Giving evidence, the respondent’s wife stated that on Tuesday 15<sup>th</sup> December 2009 during the discussion about the pay reduction, the claimant had stated that she would not work for the reduced pay and that she had stated “I’m out of here”. The respondent told the claimant not to leave and to wait until the end of the week. On 21<sup>st</sup> December 2009 the witness asked the claimant would she sign something to say she was resigning and the claimant refused this request. The claimant’s husband arrived and parked behind the witness’s car. She felt threatened and called the gardai as her car was blocked in. The Gardai stayed until the claimant left the premises. The school was finishing up that day. The witness understood the claimant came in to finish up that day. The claimant would not hand her keys back.

Under cross-examination, the witness stated that they had started at 7.30am on 21<sup>st</sup> December 2009 and she had approached the claimant during the morning. At approx 10.20am she asked the claimant for her resignation letter but she would not write one. The witness confirmed that the space for car parking was in a laneway and was very tight for parking. She told the Gardai that a member of staff would not hand over the keys. She never received the keys from the claimant. She denied going through the claimant’s bag searching for the keys. She said the company would have continued to employ the claimant at the lower rate of pay.

## **Claimant's case**

The claimant stated that the contract produced at the hearing was not the contract handed to her when she commenced her employment with the respondent. The word temporary was not on the original contract nor was the mention of reporting to both the respondent and his wife. The original contract stated that she was to report to the respondent only.

The claimant asked the respondent about wage slips on 28<sup>th</sup> August 2009 and was told that he did not provide wage slips. She rang Revenue to order a P21 and was told that no tax or PRSI was paid between 2008 and 2009. The claimant requested a contract and her personnel file from the respondent by registered letter but received no response. The claimant discontinued the wholesale run, as she did not have commercial driving insurance.

Initially the claimant said she was not accepting a 40% pay reduction. She then said she would think about it. The respondent had said he would ring her on Friday. He did not say you may as well finish on Friday. On 18<sup>th</sup> December 2009 the respondent's wife came to pay the staff. There were two cheques at the till. One cheque was for €415 which was correct and one for €315 which was incorrect. The claimant told the respondent's wife that she was not accepting this. The respondent's wife then walked out of the room.

In relation to Monday 21<sup>st</sup> December 2009, the claimant stated she arrived in work at 7.30am and the respondent's wife approached her about 10.20am and said she wanted the claimant's resignation in writing. The claimant informed her she had not resigned. The respondent's wife rang the respondent who told the claimant to hand over the keys. The claimant told the respondent that his wife had been going through her bag. She handed the keys back before the police arrived.

Under cross-examination the claimant stated she returned the contract of employment to the respondent in October 2008. The contract was not the same as the one produced at the hearing but she did not keep a copy of it. She told the respondent about her dealings with Revenue and he had said that there was nothing to worry about. The claimant confirmed she had initially refused the pay cut as she had been in shock and there had been no room for negotiation. She told the respondent that she would not take a 40% pay cut. The claimant denied she was paid for the last Monday she worked. She had initially refused to give the keys back as she understood she would be returning to work in January 2010.

The claimant stated that she had told the respondent's wife that she would be returning to work on 7<sup>th</sup> January 2010. The respondent's wife told her she would not be returning. Instead of payslips, staff received their pay along with their name and address only. She said she would return in January as she thought there would be room for negotiations on the pay reduction. The claimant maintained she was not paid for her last day on Monday 21<sup>st</sup> December 2009. The respondent denied this to be the case.

The claimant has not worked since 21<sup>st</sup> December 2009 but has applied for jobs.

## **Determination**

Having carefully considered the evidence adduced at the hearing, the Tribunal finds that the respondent had a genuine need to reduce the claimant's salary in order for his business to survive. The Tribunal accepts that the claimant was unhappy by the need to reduce her salary and indicated to the respondent that she was not prepared to work for the drastically reduced salary. The Tribunal does not find that this indication by the claimant to the respondent equated to a resignation. The Tribunal finds that what happened on the 21<sup>st</sup> December 2009 supports the fact that the claimant did not intend to resign but rather that she wished to have further discussions with the respondent regarding her future with the respondent and albeit that the respondent may not have been in a position to offer the claimant a suitable alternative to the proposed salary reduction nonetheless the claimant should have been afforded the opportunity of such discussions. In the circumstances the Tribunal finds that the claimant was unfairly dismissed.

The Tribunal awards the claimant the sum of €2,260.00 under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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