

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.

Claimant

UD2297/2011
RP2889/2011
MN2334/2011
WT935/2011

against
EMPLOYER

- Respondent

EMPLOYER

- Respondent

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. N. Russell

Members: Mr J. Browne
Mr F. Dorgan

heard this claim at Wexford on 6th June 2013

Representation:

Claimant(s) : In Person

Respondent(s) : In Person

The determination of the Tribunal was as follows:-

Background:

The claimant was employed as a shop assistant from the 5th May 2008. Initially she worked a 19-hour week which increased to a 4-day week. In 2010 her hours were cut to 1 day a week, but not at her request. In October 2010 the claimant commenced maternity leave.

On her return in April 2011 she spoke to her Manager (PM) and requested her hours to return to those she worked before commencing her maternity leave. She was informed that she would get the hours but that it would not be in writing. In October 2011 she contacted NERA concerning her rate of pay. During that month two staff commenced maternity leave and the

respondent advertised for two new staff and these new staff were given a full weeks work each. The claimant's hours were cut to 1 day per week and she was not issued a new uniform like her colleagues.

On the 29th October 2011, at 7.00 am, the claimant's son was ill and she contacted the respondent to say her son was ill and she could not be arriving for work that day. She was to commence work at 7.30 am. PM said it was "b*****t" and hung up on her. She was given a verbal warning by the owner. She wrote to the respondent on the 7th November 2011 stating she felt she had been constructively dismissed.

Claimant's Position:

The claimant stated she felt so isolated, PM did not want her working there and she was not rostered for the same amount of hours as other staff. PM told her she was not to be bothering the owner with her problems and as the situation did not improve she felt she had no alternative but to deem herself constructively dismissed.

Respondent's Position:

The owner of the respondent company stated she was not aware of the reasons the claimant had not attended work and would not have given her a verbal warning in the circumstances. On the 8th November 2011 she wrote to the claimant as she continued to roster her for work until the 10th December 2011. PM was not available to give evidence to the Tribunal.

Determination:

BS the Managing Director of the Respondent Company advised that due to the onerous level of her business commitments and responsibilities in 2008 she appointed PM as Manager and stepped back from dealing personally with staffing issues.

The Tribunal did not have the benefit of any evidence from PM who was absent from the workplace on extended sick leave. In the circumstances, much of the Claimant's evidence was uncontested.

On balance, the Tribunal is of the opinion that the Claimant was constructively dismissed and terminated her employment in circumstances where it would have been unreasonable to expect her to continue.

The Tribunal is satisfied that there was a notable shift in the manner which the Claimant was treated in the workplace to the extent that her hours of work were restricted in circumstances where there appeared to be no justification for doing so. The Claimant was required to be flexible as regards hours worked, however, she had a reasonable expectation of hours that were not being given to her.

There appears to have been other signs of a change in attitude also. The inexplicable delay in providing her with a new work uniform and the response by her Manager to what appeared to be a genuine difficulty in attending work due to her young child's illness were indicative of a level of dissatisfaction with the Claimant which appears to have been addressed by reducing her normal hours and marginalizing her to some extent.

Significant is that, based on a complaint filed by her Manager, the Claimant was given a verbal warning for two absences in circumstances where it was unreasonable for her to be given such a warning. One of the absences was authorised and the other was attributable to an urgent situation surrounding her child's health.

In awarding compensation for under the Unfair Dismissals Acts, 1997 to 2007 the Tribunal is mindful of the Claimant's employment aspirations at the time and subsequent employment history. The Tribunal awards the Claimant the sum of €2,000.00.

The claims under the Redundancy Payments Acts, 1967 to 2007, the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 were dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)