

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

MN568/2007

UD704/2007

WT241/2007

against

Employer

under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr W. Power  
Mr G. Whyte

heard this claim at Dublin on 19th October 2007

Representation:

Claimant(s) Mr. Conor Bowman BL instructed by Fitzpatrick Gallagher McEvoy,  
Solicitors, Orby Chambers, 7 Coke Lane, Smithfield, Dublin 7

Respondent(s): XXXX

The determination of the Tribunal was as follows:-

The claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and the Organisation of Working Time Act, 1997 were withdrawn during the hearing.

#### Respondent's Case

A witness for the respondent told the Tribunal that on 20 February 2007 he was asked by a client to provide a security person instead of a receptionist. The claimant was employed as a receptionist. He had a meeting with the claimant and he informed her that she was going to be assigned to another location and he offered her alternative employment. The claimant told him that she would consider this offer. Over the next few days he tried to contact the claimant as she was due to visit the site in the city to establish if the job was suitable for her. The claimant previously worked in Georges Quay. Her salary would remain the same and she would start earlier in the morning. The

claimant was informed that she would continue to be paid. The claimant was given conditions of employment regarding the transfer of undertaking. She was given a new contract of employment in February 2007. She attended a meeting in head office on 5 March. The witness was unable to contact her after this date. She was asked to contact the respondent so that the situation could be resolved. He received a letter from the claimant's solicitor on 9 March 2007.

Under the redundancy regulations it was his understanding that the respondent was not responsible for finding an exact match for the claimant. Best practice was to offer her employment. The claimant was offered similar employment to that which she had previously undertaken. He agreed to leave her on the same salary and he identified an alternative position for the claimant. The claimant agreed to go and visit the site and she did not. In the security business a high proportion of jobs were in front of house and the receptionist/security person sat behind the desk. He believed that he had no choice but to make the claimant redundant and that he informed the claimant of her redundancy on 12 March 2007. There was no further contact with her after this date.

In cross-examination when asked why he did not respond to the claimant's solicitor's letter he responded that it was not relevant to the case. He was aware that the letter concerned the claimant's employment and he did not dismiss the claimant. He telephoned the claimant on 9 March 2007 but he was unable to get through to her. When asked if it was legal to make an employee who was not in contact for a week redundant he responded that he did not know. It was not true that he got rid of the claimant as quickly as he could. When asked in regard to the job in a city hotel he responded that it entailed security/reception duties at the main entrance. When asked if the claimant was offered a job on a security site he responded that as far as he knew the role was available at the end of the week. He believed that he showed the claimant the job specification and it was a similar job. The hotel was still a construction site on 5 March 2007. When asked if he offered her an equivalent position he responded that it was an alternative position. He left a message on the claimant's telephone on a number of occasions. He reiterated that the claimant would not communicate with him regarding the situation. The respondent endeavoured to find alternative employment for the claimant and agreed to pay her salary until she found alternative employment.

In answer to questions from the Tribunal he responded that at this time the hotel was due to be opened to the public. The claimant was asked to view the site and she did not contact the respondent. He offered the claimant redundancy as he had no alternative location and he had not heard from the claimant. The claimant was paid for a week and a half. He made the decision to make the claimant redundant, as he did not feel that that the matter could be resolved. The solicitor's letter stated she was looking for an equivalent position. In some locations there were security/reception posts which the claimant was not interested in. When asked if there was a security element in the job that the claimant was offered he responded that he did not think so. No employer could say that there was an equivalent job elsewhere. When the transfer of undertaking was completed the receptionist function continued for the next three months. When asked if any negotiations took place with the claimant regarding the terms and conditions of employment he responded no. When asked if there was a telephone call made to the claimant to organise access to the site he responded no and he then said that there was and the claimant was supposed to go to the site. The respondent operated on a very low margin base and it could not pay the claimant indefinitely. The claimant was employed in a receptionist role and the respondent offered her alternative employment in a similar position.

### **Claimant's Case**

The claimant told the Tribunal that she was offered an alternative job in a building site undertaking security patrol. The job was totally different than what she had previously undertaken. When she was informed about the position in a city hotel she asked for a job specification and she discovered that it entailed security duties. The claimant needed work and she had a mortgage to pay. She needed time to think about the position that she was being offered. She attempted to contact LD in HR and she explained the situation to her. The claimant obtained alternative employment some weeks later at a lesser rate of pay.

In cross examination the claimant stated that on 5 March 2007 she asked for a job description and that she would think about it. She stated she did not receive an instruction to go to the site. She left messages on the respondent's landline as well as her mobile telephone. When asked if she requested to visit the site she responded that she had never undertaken duties in security.

### **Determination**

No genuine effort was made to find an alternative equivalent position for the claimant and in any event there was a unilateral attempt to change her terms and conditions of employment. The claim succeeds and the Tribunal awards the claimant compensation in the amount of €4,000 under the Unfair Dismissals Acts, 1997 to 2001.

As the claims under the Organisation of Working Time Act, 1997 and the Minimum Notice and Terms of Employment Acts, 1973 to 2001 were withdrawn during the hearing no award is being made under these Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

