

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD115/2007

against

2 Employers

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr D. Hayes

Members: Ms J. Winters  
Mr P. Trehy

heard this claim at Dublin on 20th June 2007  
and 11th September 2007

Representation:

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Claimant(s): Ms. Maureen Dooley, Solicitor, 19 Spencer Court, Enniscorthy,  
Co. Wexford

Respondent(s): Ms Angela Grimshaw, Peninsula Business Services  
(Ireland)Ltd, Unit 3, Ground Floor, Block S, East Point  
Business Park, Dublin 3

Peninsula Business Services Limited, Riverside, New Bailey  
M3 5PB, United Kingdom

The determination of the Tribunal was as follows: -

#### **Claimant's Case**

The Claimant told the Tribunal that she commenced work in September 2005. She attended for interview and discussed hours of work and wages. She also informed the Respondent that she intended to adopt a child and would need to visit another country, as it was a foreign adoption. At the interview she was informed that she would work from 9a.m. to 1p.m. for four days and that she would work late one night a week. She worked Monday, Tuesday, Wednesday and Friday from 9am until 1p.m. and she worked on Thursday from 6p.m. until 9p.m. She was happy the adoptive leave would be facilitated. In December RK, one of the directors told her that she wanted to reduce

her morning hours to 12 o'clock. The Claimant told her what was agreed and she withdrew this. The Claimant was told to continue for the moment and they would come to some agreement later. She was employed four months before getting a permanent contract. She should have got a permanent contract on 5 January. When she did receive it at the end of January, the contract provided for fifteen hours a week. The Claimant always worked eighteen or nineteen hours as agreed. She was satisfied with the contract apart from the fifteen hours.

The Claimant commenced adoptive leave at the end of March 2006. The shop was due to close at the beginning of June 2006 to change over to a new brand but this did not happen and she enquired as to when the shop was due to close. Her adoptive leave was due to expire in mid August as far as she was aware. She was expected to give one month's notice of her intention to return to work.

The Claimant went on holidays on 16 June 2006 and returned the end of July 2006. She wanted to do the right thing as regards returning to work. In mid August 2006 her adoptive leave was due to end. The shop closed at the end of August 2006 and she did not go back to work. She explained to KK, one of the directors that there was no point in her going back for a short period as she could not organise child minding for two weeks. KK told her he was happy and she could start when the shop reopened. On 18 August 2006 she sent a letter to her employer in which she informed that her adoptive leave had finished. She wanted to know when the shop was due to reopen and when she was required to return to work. She could never get to speak to the Respondent on the telephone. She left messages, which were never responded to. The shop closed on 15 September 2006 and it reopened in November 2006. In the last conversation she had with KK, he told her that her job was still there and he would meet her on her return to work. This took place in June or July 2006.

She checked on the store to establish when it was reopening. She went in one day and discovered that the staff were getting ready to open the store the following day. She only knew one person there. She contacted the store and explained that she had noticed the store was about to reopen. She wanted to speak to someone about her return to work. The new manageress spoke to her in a very formal manner. The manageress told her at first that there was no job for her as she had taken on all her staff and that she did not know who the Claimant was. The Claimant was taken aback at this and telephoned KK. KK told her that he had forgotten to tell the new manageress about her. She told him that she was worried about her job. He told her to come down to the shop and they would discuss her job. About a week later the Claimant went to the store to discuss the job with the KK and the new manageress. KK did not in fact attend the meeting. She was then told that there was a job. She was told that she would have to work whenever it suited the Respondent and that she would have to adapt to the roster and she could have to work in the morning or afternoon. The Respondent was aware that she could not work afternoon hours. The reason she accepted the job initially was the hours that she was offered. She explained to the manageress that she was unable to do the hours and as far as she was concerned her old job had gone and she was not offered the hours that she always worked. The manageress told her it was not the Respondent's problem.

In a letter dated 27 November 2006 the Claimant submitted her resignation. Initially the manageress said that she could not accept the letter of resignation. Eventually she did. The Claimant requested her P45. She had difficulties in receiving this from the Respondent and she eventually received this in February 2007. She enjoyed working with the Respondent and had a good relationship with her colleagues.

The Claimant accepted that the directors were reasonable employers and that they facilitated her days off. She said that likewise she tried to be flexible and helpful to them. It was put to her that she failed to give four weeks' notice in writing of her adoptive leave but only gave two weeks' oral

notice. It was put to the Claimant that her telephone records showed only several very short calls to KK during her period of adoptive leave. It was also put to her that she did not talk to KK. The Claimant insisted that she did.

She did not give a month's notice of her intention to return to work. She handed a letter dated 18 August to a person who was working in the store. It was put to the Claimant that she was offered her job back on the same terms and conditions with the same hours. The Claimant said that if that had been the case she would gladly have stayed in the job.

## **Respondent's Case**

RT told the Tribunal that he worked for the Respondent when it opened. When he commenced employment the Claimant was an employee. When the Claimant went on adoptive leave seven or eight staff were employed in the store. The Claimant commenced adoptive leave at the end of March 2006. The Claimant visited the store twice and the first occasion was in May between 6p.m. to 6.30p.m. KK's office was upstairs and he had an open-door policy and staff could go to him to discuss issues. The Claimant came in with her two daughters and introduced her newly adopted daughter. She did not ask to see the director. She came in once or twice at the most and she came in between 6 to 7p.m. The director left the office between 4.30p.m. and 5p.m. The Claimant was familiar with the director's hours of work. He said that he does not remember the Claimant saying that she was returning to work. He could not recollect the Claimant bringing in a letter for KK. In the normal course of events he would take the post to KK's desk. If a courier delivered post he would sign for it and leave it on the director's desk. The store closed on 15 September 2006 and reopened on 17 November 2006. The Claimant may have come in to the store at the end of August and he did not recall her saying anything. She bought a couple of items and she did not ask to see the director.

In cross-examination RT stated that he was a stock controller and he undertook other duties as well. The stock room was located upstairs. On occasion he worked in the mornings and other times he worked in the afternoons. He accepted that he was not always on the shop floor when working. He also accepted that it was possible that the Claimant came to the shop without him noticing.

RK told the Tribunal that she dealt with HR issues. At the time the new store opened the Respondent had a new manager CR. RK was on maternity leave from Christmas 2005 until the new shop opened but she was available on the telephone. RK said that she thought that the Claimant had been employed by her and the then manageress. When the Claimant was interviewed she told RK she could work. When the Claimant signed her contract she was of the understanding that she would work eighteen or nineteen hours a week and the Claimant was happy with that. She spoke to the Claimant after the shop had reopened. She had a number of questions for the Claimant who was seeking to return to her job. In August she did not receive notice that the Claimant was returning to work. The first time that the Claimant came in to the store she stated that she wanted to come back. The Respondent had an open-door policy for its entire staff. When the Claimant was going on adoptive leave she did not give the required notice but was nonetheless allowed to take it. It was a family issue for the Claimant and all employees were assets of the business.

RK said that the first point of call for employees was the store manager. They could also call her if needed. She said that the Claimant did not contact her or the manager when she was expected back to work. RK returned to work in October 2006. When the shop had reopened, she was told by CR that the Claimant was in the shop looking for her job back. She asked the Claimant why she had

not contacted the Respondent and she told her that she had spoken to RT. She asked why the Claimant had not spoken to KK or her about returning to work but she had no answer. She said that the Respondent was not actively looking for staff at the time but that she was willing to give the Claimant her job back. She told CR that the Claimant would have to sign a new contract because the company's name had changed but that it should reflect her original starting date. She did not see the Claimant after that date. She said that she understood that the Claimant was going to sign a new contract. She subsequently asked CR where the Claimant went and she informed her that the Claimant had gone away to think about it. Some days later she saw CR who told her that the Claimant had submitted a letter of resignation and she was informed that the job no longer suited her.

In cross-examination RT accepted that it was possible that the Claimant had spoken to KK before the commencement of her employment but said that she had also spoken to her. She said that if the Claimant was saying that she was interviewed by KK that she accepted that. She said that she first became aware of the Claimant's adoptive leave in March 2006. She could not say if KK or the then manager knew of it before that. She said that she had always believed that the Claimant would return to work after the expiry of her adoptive leave. She accepted that it was not a question of the Claimant getting a new job but that she was getting her old job back.

## **Determination**

The Claimant commenced her employment with the Respondent in September 2005 as a part-time sales assistant. She earned approximately €180.00 per week. When she was being interviewed for the job she informed the Respondent that she was intending to adopt a baby and would require adoptive leave. This did not present any difficulty.

At the end of March 2006 the Claimant went on adoptive leave. When she went on adoptive leave the shop had been due to close so as to allow for a re-branding. When her leave was due to expire, in August 2006, the shop had still not closed. The shop finally closed in early September 2006. The Claimant explained to KK, one of the directors, that she felt that there was no point in her going back for two weeks, with the attendant difficulties of securing childcare for such a short period, and then being off again for two months. KK agreed to this and was happy for her to recommence employment when the shop reopened.

When the Claimant sought to recommence work in November 2006 the new manageress had never heard of her. Nonetheless, she did recommence her employment. It was accepted by the Respondent that the Claimant was resuming her old job rather than starting a new job.

Previously the Claimant had worked three mornings and two evenings per week. On recommencing employment she was told by the new manageress that she would have to work whatever hours fitted in with the company's roster. She was told that she could be required to work mornings, afternoons or evenings. The Claimant explained to the manageress that there were hours that she was unable to work. She was told that it was not the Respondent's problem if the Claimant could not work the required hours. The Claimant therefore resigned her employment.

In the course of cross-examination and in the course of the Respondent's evidence it was suggested that the Claimant had not given the requisite notice on her intention to take adoptive leave and of her intention to return to work. It was the Claimant's uncontested evidence that she informed KK

of her intention to take leave and of her intention to return to work. The notice given before taking the leave may not have been in writing but it was nonetheless accepted at that time by the Respondent. The Claimant gave very clear evidence of handing in a letter for KK in respect of her intention to return to work. The best evidence from the Respondent was that another employee could not remember being given a letter to leave for KK. It is significant that KK was not called to give evidence. The Tribunal accepts the Claimant's evidence in this regard. The Tribunal has already accepted that the Respondent was happy for the Claimant not to recommence work in August.

The Tribunal is satisfied that the Claimant was justified in her resignation. Her terms of employment had been substantially altered on her return from adoptive leave, to the extent that she would have had difficulty in working the hours required. She did raise the matter with the manageress but was told that it was not the Respondent's problem. Significantly, the manageress was not called to give evidence. The Tribunal is satisfied that the Claimant's resignation amounted to a dismissal. No evidence was tendered to displace the presumption of unfairness. The Tribunal is therefore satisfied that the dismissal was unfair. In the circumstances the Tribunal is satisfied that the appropriate remedy is compensation in the amount of €3,000.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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