

EMPLOYMENT APPEALS TRIBUNAL

Claims Of:
Employee
MN728/2006
against
Employer

Case No.
UD1104/2006

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney B.L.
Members: Mr. G. Phelan
Mr. T. Kennelly

heard this claim at Thurles on 25th September 2007

Representation:

Claimant: In person

Respondent: Ms. K. Burke, Peter O'Meara & Co., Solicitors, Thurles, Co. Tipperary

The determination of the Tribunal was as follows:

Respondent's Case:

The claimant worked a three-day week for the respondent and her duties involved invoicing, daily banking and calculating wages. Throughout April and May 2006 the respondent and the claimant had many discussions concerning the respondent's lack of work. It was agreed that the claimant's hours would reduce to two and a half days per week. The claimant asked if she could commence work at 8am rather than 9am and finish earlier. The respondent agreed to this and told her that he was not getting any busier with work.

Towards the end of July 2006 the respondent had to terminate the employment of four employees as he was in financial difficulty. His main ambition at that time was to secure new work as he was contracted to only one company and his workload depended on the level of work that company had. Some time after this, the respondent had to terminate the employment of a further two employees.

The claimant was responsible for calculating wages and as a result of the redundancies there was less work for her to do. The claimant worked eighteen hours per week until July 2006 but the respondent did not reduce her pay in accordance with the reduction in the hours she worked. There was not enough work for the claimant. Her duties including the calculation of wages, the generation of invoices and the daily banking had all reduced. The claimant did not have to answer the telephone as the office phone was diverted to the respondent's mobile.

The respondent had several discussions with the claimant about the lack of work. The claimant

would also have been aware of this as she generated the invoices. The respondent told the claimant on the 10 August 2006 that he was ending her employment, as there was not enough work for her to do. He told the claimant there was no need for her to work her notice and he paid her the amount of €700, which equated to two weeks wages.

The respondent has not filled the claimant's position and his accountant now calculates the wages for the remaining employees.

Claimant's Case:

The claimant was on annual leave and returned to work on the 9 August 2006. Throughout the day she spoke the respondent about a number of work related matters. There was no indication of the following day's events.

On the 10 August 2006 the claimant attended for work at 8am. At 8.30am the respondent told her that he was ending her employment. The claimant knew that the respondent's work was very quiet and she told him "if I have to go, I have to go" but she offered to do the bookwork in an evening or on a Saturday. The respondent told her he was ending her employment for another reason. The claimant was upset by this reason. She gathered her belongings and left. The claimant accepted the respondent paid her €700 and this included her minimum notice entitlement.

The claimant established her loss for the Tribunal.

During cross-examination the claimant stated that when she commenced employment with the respondent she did so on the basis that her hours would increase, as the respondent's work got busier. The claimant stated that her role involved more than office work, such as, collecting and delivering materials to sites.

Determination:

The Tribunal accept the respondent's work had diminished to a level whereby a genuine redundancy situation existed in relation to the claimant's position. The reduction in business levels warranted the termination of the claimant's employment. Therefore, the claim under the Unfair Dismissal Acts, 1977 to 2001, is dismissed.

The claimant accepted that her entitlement under the Minimum Notice And Terms Of Employment Acts, 1973 to 2001, had been paid to her. Therefore, the claim is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)