

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO. UD696/2007

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr B Garvey BL

Members: Mr F Moloney
Mr B Mckenna

heard this claim at Dundalk on 7th March 2008

Representation:

Claimant: Ms. Marie Hayes, Citizens Information Centre,
4 Adelphi Court, Long Walk, Dundalk, Co Louth

Respondent: Brian Berrills & Co, Solicitors,
5 Francis Street, Dundalk, Co Louth

The determination of the Tribunal was as follows:-

The claimant was employed by the respondent company as a play area attendant from 18th September 2003 to mid 2007. The fact of dismissal was disputed, as were the hours worked and the last date of employment.

Respondent's Case:

The Group Managing Director (MD) of the respondent company stated that the claimant had given her notice in March. New staff were taken on at this time. A leaving party was organised for Saturday 31st March 2007. On that day the claimant arrived some time before the party and said that she had changed her mind. The claimant's new job with Vodafone would only be weekend work and she would be available Monday to Thursday. The respondent agreed to give the claimant hours, though new staff had to be accommodated. During the summer holidays there was a dip in work. The claimant rang in late June and MD told her that he couldn't give her hours, it was not because she had her phone turned off. He offered her some housework as she had done housework for him previously and hours for a different company at a bowling alley. MD disputes that he dismissed the claimant and that she was unavailable for work that he offered her. He hadn't responded to a letter from the claimant asking if she was dismissed, as she had not been dismissed. The last payment made to the claimant was on 21st June 2007.

Claimant's Case:

The claimant stated that her hours varied over the years depending on whether she was in college. She started with Vodafone on 2nd April 2007, and gave her notice to the respondent on 22nd March 2007. On the day of her leaving party she went to speak with MD around 4pm to say she had changed her mind, but she was only available weekdays. MD was happy to have her back and he would give her what hours he could. The claimant attended the party that night, colleagues were joking with her as to why she was taking the card and money when she wasn't leaving. The claimant worked regular hours until June.

On 10th June the claimant asked where the roster was and was told by a supervisor that there was no roster, that MD had said he would ring staff with their hours; but MD never phoned. The claimant rang on 15th June and was told she was not rostered, a supervisor told her it was because she could not contact the claimant by phone. The claimant rang MD to find out why she was off the roster. He told her to come in on Monday. That day he said he didn't have hours for her at that time. He was doing up the café and said she could manage it when it was ready. MD offered the claimant some housework, to which she said ok but considered this to be discrimination as other staff were given hours when she should have been given priority. The claimant felt that she no longer had a job at that time. MD had not responded to her letter but he had phoned. MD told her to ring on Thursday, and when she did he offered her work that day 4pm-9pm. However, the claimant refused the work as she was babysitting. MD said if she couldn't come her job was over. She didn't hear from him again.

The claimant began working for iQon Technologies in July three or four weeks after finishing with the respondent company. She finished working there in September as the hours conflicted with her college schedule. The claimant had not worked since September.

Determination:

The Tribunal do not accept that there was an unfair dismissal in this matter. The employer behaved in a reasonable manner after the claimant's notice was received, and attempted to do what he could for her. The claimant was not in a position to take up offers of work from the employer. The employer had to continue to manage his business. The claimant was not discriminated against or humiliated. Therefore the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)