

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

Employee

UD1339/2006

MN886/2006

WT415/2006

against

Employer

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. J. O'Connor

Members: Mr. G. Phelan  
Mr. K. O'Connor

heard these claims at Killarney on 7 April  
and 24 June 2008

Representation:

Claimant:

Ms. Elizabeth Murphy B.L. instructed by  
Mr. Conor Murphy, Murphy Healy & Co. Solicitors,  
Market Street, Kenmare, Co. Kerry

Respondent:

Mr. Pearse Sreenan B.L. instructed by  
Ms. Carmel Sreenan, Sreenan & Co. Solicitors,  
Cromwell's Court, Kenmare, Co. Kerry

The determination of the Tribunal was as follows: -

This being a claim of constructive dismissal it fell to the claimant to make her case.

The claimant was employed in the respondent's shop from 1994. In 2000 the claimant became

manager of the shop, which trades seven days a week with Friday and Sunday being the busiest days of the week. The claimant worked Sundays and in the years 2001 to 2004 she worked an average of 27 Sundays per annum. The claimant commenced maternity leave on 28 February 2005, returning to work on 18 July 2005. On return from maternity leave the managing director (MD) and MD's wife (DW) wanted the claimant to work one Sunday per month. The claimant resisted this but agreed to work alternate Sunday mornings from 8-30am until 11-30am in order to help set the shop up. The respondent facilitated the claimant in that her starting time was put back from 7-30am to 8-30am. The respondent's position was that it had been agreed between the parties that the claimant's working arrangements would be discussed again in January 2006.

When MD discussed the matter with the claimant on 30 January 2006 the claimant asserted that she had agreed with him in August 2005 that she would only be required to work one Sunday per month. MD told the claimant that the minimum number of Sundays he would accept from her was twenty per annum. The claimant's position was that after eleven years service she had done her share of Sunday work. From that point onwards there was a dispute between the parties over Sunday working, as MD wanted the claimant to revert to the working pattern she had followed prior to her maternity leave. MD wrote to the claimant on 3 February 2006 asking her to outline her difficulties in regard to Sunday working. The claimant replied in a letter of 9 February 2006 stating that there was no contractual agreement for her to work alternate Sundays and she proposed to carry on working one Sunday per month.

Relations between the parties deteriorated to the extent that, on 3 March 2006, MD issued the claimant with a verbal warning, which was later rescinded, over the issue of Sunday working. The claimant met with MD, in the presence of their respective solicitors, on 14 March 2006. At this meeting the claimant offered to compromise and work sixteen Sundays per annum. MD rejected this on the basis that the requirement had already been dropped to twenty Sundays per annum. The claimant's position is that from this point on she had ongoing difficulties in the employment in that MD and DW began to interfere in matters that had previously been her responsibility such as rostering and allocation of holidays. At some stage in early June 2006 MD offered the claimant the option of working eighteen Sundays per annum. This offer was rejected in a letter from the claimant's solicitor on 8 June 2006 in which it was stated that the claimant would continue to work twelve Sundays per annum. The claimant felt undermined in relation to incidents involving checking the CCTV system and an apparent shortfall in takings, which on checking was found to have already been lodged with the bank. This culminated in the claimant's solicitor writing on 10 August 2006 to say that the claimant felt that she had no option but to resign. This was confirmed in a further letter dated 17 August 2006. The resignation was accepted in a letter of 17 August 2006. The claimant met DW who suggested one final meeting in an attempt to break the impasse and offered the claimant a week's paid leave to think about her situation. The claimant left the employment on 20 August 2006.

**Determination**

The difficulty over Sunday working was the essence of the problem in this case. From July 2005 onwards there was a series of meetings to attempt to resolve the matter and the respondent offered a number of compromises. These meetings and compromises failed to resolve the difficulty and ultimately the claimant tendered her resignation. Nevertheless DW instigated a further meeting for the following Monday which the claimant chose not to attend. The Tribunal finds that, given the custom and practice that had prevailed for a number of years, and given the nature of the business, the change, which the claimant sought, was a change to her existing contract. The Tribunal further finds that, in the considerable number of meetings, the respondent acted fairly. In those circumstances it follows that the claim under the Unfair Dismissals Acts, 1977 to 2001 must fail. This being a claim of constructive dismissal a claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 does not arise. Having heard the evidence of both parties on the matter the Tribunal is not satisfied that there was any breach of the Organisation of Working Time Act, 1997, in those circumstances the claim under that Act must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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