

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD286/2008

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary BL

Members: Mr. M. Kennedy
Mr. B. McKenna

heard this claim in Dundalk on 27 June 2008

Representation:

Claimant(s) :

Mr. Dermot Lavery, Dermot Lavery & Company, Solicitors,
Roden Place, Dundalk, Co. Louth

Respondent(s) :

Mr. Sean Bellew BL instructed by
Mr. Frank McArdle, McArdle & Associates, Solicitors,
10 Roden Place, Dundalk, Co. Louth

The determination of the Tribunal was as follows:-

Case for Claimant

Giving sworn testimony, the claimant said that, in addition to the income she received as a single mother, she was entitled to work twenty hours per week and that she had worked the permitted twenty hours per week for the respondent as a kitchen carvery assistant until 3 December 2007 when she cut her thumb, had eight stitches and was told by her doctor not to return to work until after Xmas.

The claimant told the Tribunal that she went back to work on 7 January 2008 but that, on her return, she only had three days' work so that her hours were reduced to fifteen. On 22 February she asked the head chef (hereafter referred to as HC) when she would get her hours back. However, she was

told that she could not return to twenty hours per week because she had left the respondent in a mess and that the respondent could not chance giving her back her hours in case she was out sick again.

The claimant continued to work until 27 February 2008. This was the last day she worked for the respondent. She rang on 2 March to say that she was not coming back because she had got somewhere else for twenty hours per week.

However, the new job (hereafter referred to as NJ) did not work out. The claimant started there on 3 March. She just got three hours there. That was it. She was now working in a bar since 22 March where she was only doing nine hours over two days for ten euro per hour. She had left CVs around looking for more work. A list of places was furnished to the Tribunal. The Tribunal was told that the claimant had incurred a loss of €1,910.00 up to 18 June and had an ongoing loss of €70.00 per week.

In cross-examination, it was put to the claimant that HC (the abovementioned head chef) would tell the Tribunal that, in November, the claimant had asked to go from twenty hours per week to fifteen. The claimant denied this saying that she had sent in a doctor's note every week and that, when she came back, she was rostered for three days (fifteen hours) per week although she had been working a full twenty hours since 2005.

It was put to the claimant that HC would say that she (HC) had never said to the claimant that she had left the business in a mess. The claimant replied: "She did."

Asked why she would wait six weeks before protesting, the claimant said that she had been waiting to see when she would get her twenty hours back but that it then went down to two days whereupon she went to HC.

The claimant told the Tribunal that she ultimately told HC that she was not coming back to the respondent because she was due to go to NJ (the abovementioned new job). The claimant acknowledged that she had said to HC: "That's the way it is." However, the claimant denied that she had then hung up on HC.

The claimant said to the Tribunal that she had got a phonecall from NJ on Saturday 1 March to say that she would be going there and that she had got an offer of twenty hours per week. She was only getting two days at the time. She rang on the Sunday (2 March) to say that she was not going back to the respondent.

It was put to the claimant that she had said that she was going to get twenty hours from NJ but that she only got three hours. The claimant confirmed this.

It was put to the claimant that she had left the respondent but that it had not worked out. She replied: "I wanted my twenty hours back."

When it was put to the claimant that January/February was a quiet time i.e. that the respondent had not given her much work, the claimant said: "I'm looking for more work."

In re-examination, the claimant was asked if it had been a slack time. She denied this saying that a named person from the bar had worked her hours.

Under resumed cross-examination, the claimant said that she had been paid for three weeks while out sick but that she had been out for five to six weeks.

Questioned by the Tribunal, the claimant said that she first applied to NJ on Saturday 1 March 2008, that she had left in her CV that day, that they had rung her that day and that she had notified the respondent on the Sunday (2 March).

Asked if she had queried NJ about the job turning out to be less than she had expected, the claimant replied that they had said that it was a quiet time and that they could only give her three hours. The claimant told the Tribunal that they had offered her four hours for all five days and three hours on a Saturday.

The claimant said to the Tribunal that she had not had a written contract with the respondent although she had started in 2005 and had been there two-and-a-half years.

Case for Respondent

Giving sworn testimony, HC (the abovementioned head chef) said that she was familiar with the claimant who had started working for the respondent in October 2005 but had asked to cut back her hours in November 2007.

HC confirmed that the claimant had cut her thumb and had had stitches although HC had not been there that day. The claimant had come with a cert every week but it had not been known when she would be back.

HC told the Tribunal that January 2008 had been a slack time. The claimant was not getting the same hours as before Xmas. The claimant did go to HC but HC did not recall the date. The claimant asked when she could get her hours back and HC said that it would pick up in time.

HC denied to the Tribunal that she had ever said to the claimant that she had left the business in a mess and told the Tribunal that they had had no other conversation about the claimant's hours.

Asked about Sunday 2 March, HC said that she took a call from the claimant who said that she was leaving whereupon HC had said that it was not much notice but the claimant had put the phone down after saying: "That's the way it is."

Under cross-examination, HC said it was not her recollection that she had said to the claimant that the claimant had left the business in a mess.

It was put to HC that the claimant had been entitled to feel constructively dismissed (subsequent to her hours having been reduced). HC replied: "She never came to me and said she'd have to leave. I did not tell her that she would not get the hours but not at that time."

Questioned by the Tribunal, HC said: "I did not give her a contract. I did not know the law required that."

Determination:

Having carefully considered the evidence adduced, the Tribunal finds that the claimant was constructively dismissed from her employment with the respondent. Taking cognisance of the financial loss incurred by the claimant and her prospects for future employment, the Tribunal deems it just and equitable to award her the sum of €2,000.00 (two thousand euro) under the UnfairDismissals Acts, 1977 to 2001, as compensation for the said constructive dismissal.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)