

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM(S) OF:**

Employee

**CASE NO.**

UD879/2007

against

Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr M. Murphy  
Mr O. Nulty

heard this claim at Drogheda on 14<sup>th</sup> April 2008  
and 17<sup>th</sup> July 2008

**Representation:**

Claimant(s) : XXXX

Respondent(s) : Mr. Michael McNamee BL instructed by:  
Mr. Fiach McHugh, McKeever Taylor, Solicitors, 31 Laurence Street,  
Drogheda, Co. Louth

The determination of the Tribunal was as follows:-

**Respondent's Case:**

The Administration Director gave evidence. She explained that she had known the claimant previously as they had both been employed in another nursing home. When the witness moved to work for the respondent, she contacted the claimant to see if she wanted a position there as cleaning Supervisor.

When details of the claimant's T1A form were put to the witness, she refuted that she had not been aware of the claimant's religious beliefs or that the claimant could not work on Saturdays for religious reasons.

The witness explained that when the claimant and herself first started the respondent business was only on a small scale with one full-time cleaner and another cleaner that worked at the weekend. As the business expanded, the system of two cleaners was not working and the cleaning staff agreed to work five days out of seven and every second weekend. The claimant knew of the changes and did not say she would not work on Saturdays. More cleaners were needed and the claimant was able to recommend some people. The claimant was also given the task of compiling

the rosters.

In June 2007 the claimant took two weeks leave at short notice. The witness told staff she would compile the rosters and explained that as the claimant was off they might not get a full weekend off. When the staff saw the rosters they thanked the witness for giving them a full weekend off. One of the staff asked to speak to her and informed her that the claimant did not work on Saturdays and that she was not to tell the witness as she might lose her job. The witness spoke to another staff member and was told the same. The witness decided to investigate the matter.

On June 26<sup>th</sup> 2007 the claimant was called to a meeting with the witness. A secretary took notes of the meeting. The allegations of abusing her position as Supervisor by manipulating the roster and refusing staff requests to approach Management regarding the roster were put to the claimant. The claimant disagreed and said that she could not work on Saturdays because of her religion. She told the Tribunal that this was the first time she had heard about the claimant's religion. She told the claimant that it was in her contract to work five days of seven, the claimant replied that she had not understood the contents of the contract even though she had had it for two weeks before signing it. The witness told the Tribunal that she could not understand this as the claimant understood what the witness said to her and even wrote notes in English to the witness regarding work.

During the meeting the claimant again told the witness that she would not work Saturdays and would leave. The witness told the claimant to take time out to think about it and not make any rash decisions. The claimant was given a letter regarding the allegations laid against her.

The following day the claimant was sent a letter requesting her attendance at a disciplinary meeting on July 2<sup>nd</sup> 2007. She could bring a representative if she wished. The claimant, her pastor who acted as a witness and the Director of Nursing attended the meeting. The claimant's pastor never spoke. The claimant again refused to work on Saturdays. The issue of the rosters was not discussed as the witness said that they could not get past the issue of Saturday work. The claimant was very angry. It was a short meeting and the claimant would not change her mind concerning Saturday work. The claimant was notified in a letter, dated July 2<sup>nd</sup> 2007, that as she had been in breach of her contract and there was no other choice but to terminate her contract immediately.

On cross-examination the witness said that weekend work was not an issue in their previous employment. She also replied that there had never been an issue with the Claimant's work but when issues had been brought to her attention she had to deal with them. She had not known the claimant's religion as she had never spoken about it. She explained that she worked Monday to Friday but was on call at weekends if required. She shared her position with the Director of Nursing. It was put to her that the claimant had not seen two written statements from two staff members before the second day of the hearing, she replied that the statements were there for the Claimant at the meeting of June 26<sup>th</sup> 2007. The witness stated that a person in administration had written in 8-4 for Saturday 17<sup>th</sup> against the claimant's name on the roster for the fortnight February 12<sup>th</sup> to 25<sup>th</sup> 2007.

When asked by the Tribunal if there had been any discussions with the claimant prior to the letter of June 26<sup>th</sup> 2007, she replied that she had not thought the claimant had returned from leave. The Director of Nursing and the witness had carried out the investigation in twenty-four hours. She was asked how the letter June 26<sup>th</sup> 2007 had been given to the claimant and she replied that she thought she had posted it.

The Director of Nursing gave evidence. She explained that she had gone through the claimant's contract with her, which was issued on March 6<sup>th</sup> 2007, the claimant took it away for two weeks. On her return the witness asked if the claimant had any questions and explained working five days out of seven-day roster. The witness told the Tribunal that the claimant had no questions and there was no mention of her religion or not working on Saturdays. They both signed off on the contract on March 20<sup>th</sup> 2007.

The witness attended the meeting of July 2<sup>nd</sup> 2007. The witness corroborated what the first witness for the respondent had given in evidence about this meeting. She stated that the claimant had been due back to work from leave on June 27<sup>th</sup> 2007.

On cross-examination it was put to her that the claimant had mentioned she did not work on Saturdays and that everyone knew about it on the day they signed off on her contract, she replied no.

She was asked by the Tribunal how she had been given the function to go over the contract with the claimant, she replied that it was up to her or the Administration Director to do it. When asked if there were any other copies available of rosters showing the claimant rostered to work any other Saturday than February 17<sup>th</sup> 2007, she replied no.

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

The claimant gave evidence. She stated that she had worked previously with the two respondent's witnesses in another nursing home. Both left and after some time the respondent's first witness contacted her and offered her a position with the respondent. At this time there was a different Administration Director, the respondent's first witness was working on reception. She agreed to the position but had two issues to discuss, her rate of pay and the fact she did not work on Saturdays. The respondent's first witness told her it would not be a problem. Some time later the respondent's first witness took over the position as Administration Director.

She visited the nursing home and met with another member of staff. There were thirteen rooms to be covered. The claimant and the other staff member agreed the days they would work, her colleague on Saturday and the claimant on Sunday. There were no problems for the first five or six months then her colleague decided she wanted to change jobs. The claimant got someone to take her former colleague's position. She was also asked to get one more person.

When this person started she had very little English and the claimant showed her what to do. The Administration Director told this person that she would have to work over a seven-day week and she agreed. More patients were admitted and another cleaner was requested by the staff as they were overworked.

The claimant told the Tribunal that the staff were un-happy. She approached the Administration Director with the staff's problems but was told that nothing could be done. The staff asked for contracts of employment. When asked if she had her contract for a two-week period before signing it, she replied that she had it for one week.

The claimant told her that she did not work Saturdays and the Director of Nursing replied that they all knew that. When asked had she not looked at the hours and days specified in her contract, she replied that it had been blank. The Director of Nursing told her to fill in the blanks. When she had told the Director of Nursing that she did not work nights, as stated in the contract, she was told that

the contract was standard.

In cross-examination she stated that she began compiling the rosters for the cleaners and laundry staff eight months after she commenced employment with the respondent. She admitted that she designate the days to the staff but they had all sat together and she asked them what days they wanted off. There were four cleaners at the time but the staff wanted another member because of all the work to be done. She stated that the other staff never complained about working Saturdays, and that everyone took turns apart from her. She did not work every Sunday which was paid at time and a half.

On June 26<sup>th</sup> 2007 she arrived for work and saw her colleagues working. The claimant told the Tribunal that they all looked very sad, "as if something had happened". After 9.00 am the Administration Director came in, asked to see the claimant in the office and told the claimant that she should not have been in work that day. The claimant said that she knew that she was to work Monday to Friday as she had Sunday off to be with her children. In the office the tone was different, she was given a letter and told she had to work Saturdays, that she had abused the rosters and had not allowed other staff to come to the Administration Director with complaints. She was told there would be an investigation, the staff would be spoken to, she was not to compile the rosters anymore and was to work on Saturdays. She replied that it was known from the beginning that she could not work Saturdays. She was told to return to work but after some time she was asked to return and informed that she was suspended for a week with pay.

She received the letter dated June 27<sup>th</sup> 2007 probably on the following Friday (29<sup>th</sup>). At the meeting of July 2<sup>nd</sup> 2007 she was asked to work Saturdays work. When she replied no, she was told if she would not work Saturdays there was nothing further to discuss. She was then told she was fired which was confirmed in writing.

The claimant gave evidence of loss and the fact that she was finding it very hard to secure employment being a single parent with three children.

On cross-examination she was questioned on the mitigation of her loss. When asked if the written record of the meeting of June 26<sup>th</sup> 2007 was accurate, she replied no and that some of the conversation was missing. She explained that on that day she had been treated badly by the other staff, they had shouted at her and one member of staff was not happy that the claimant was paid a slightly higher rate of pay.

In response to the question of whether she understood the contents of her contract, she replied that she did. She said that she could write in English but explained that she could write some words but not a statement. She stated that everyone knew she did not work on Saturdays because of her religious beliefs and she had spoken to the Administration Director and the Director of Nursing about it. When asked why her pastor had attended the meeting of July 2<sup>nd</sup> 2007 and had not said anything, she replied that she had no one else to consult with and he did not get a chance to say anything, as the meeting was very short.

She also said that her colleagues told her she was no longer the supervisor on the day she returned from leave.

**Determination:**

The Tribunal has carefully considered all the evidence by both parties in this case. The Tribunal finds that the procedure used by the respondent in this case was unfair in the dismissal of the claimant.

The claimant did not understand nor was it explained to her the implications of the clause in her contract of working a five-day over a seven-day week before she signed off on it. No prior notice was given to the claimant of the disciplinary meeting of June 26<sup>th</sup> 2007. The investigation carried out by the Administration Director took place over a 24-hour period only and this was done while the claimant was on leave. No investigation was made into prior rosters to ascertain if the claimant had ever worked any other Saturday while employed with the respondent.

Accordingly, the Tribunal having considered the remedies under the Acts and the preferences expressed at the hearing by the parties decide that compensation is the most appropriate remedy and awards the claimant the sum of € 18,000 under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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