

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM(S) OF:**

Employee

**CASE NO.**

UD477/2008

against  
Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr J. Hennessy  
Dr. A. Clune

heard this claim at Clonmel on 21st November 2008

**Representation:**

Claimant(s) : Mr. Gareth Hayden BL instructed by:  
Eamonn Hayes, Solicitors, 50 New Street, Carrick-On-Suir, Tipperary

Respondent(s) :Mr. John Barry, Management Support Services (Ireland) Limited, The Courtyard,  
Hill Street, Dublin 1

The determination of the Tribunal was as follows:-

**Respondent's Case:**

The owner of the respondent company gave evidence. She explained the business offered gym facilities for women. At the time there was one full-time employee, the Manager, and three part-time employees, including the claimant. The claimant worked a 20-hour week over three days as a fitness technician. The Manager worked a 40-hour week over five and a half days, one part-timer worked 16 hours and the other did 23 hours per week.

As time passed business declined. The witness met with the staff on a regular basis and informed them of the company's financial difficulties. In October 2007 she discussed with the claimant the possibility of changing from a three-day to a five-day week but still only working 20 hours a week.

The witness explained that the reason for this change was there was too many staff working during quiet times and vice versa. The claimant said it was not feasible due to childcare difficulties. She told the claimant that she would try to keep her on a three-day week but would have to see how the business progressed.

The situation got worse. Business depleted and 50% of the respondent's turnover was staff costs and therefore it was decided there had to be a reduction in staff hours. The witness stopped drawing a salary from the company. In April 2008 she again spoke to the claimant about her working week and again the claimant said that she could not work a five-day week. The witness explained that she had to review the situation. She met with the claimant off-site and informed the claimant that she would have to let her go as she could only work a three-day week. She handed her a letter of explanation. The claimant did not mention that she would change her schedule and was very upset. She received a week's notice. The claimant was not replaced.

On cross-examination she said that she accepted that the claimant could not work a five-day week but the business needed to be staffed. When put to her she said that she had not told the claimant that she would have to start the five-day roster within five days of discussing it. When asked, she stated that the reason the claimant was let go was because she was the least flexible. She had not asked her if her situation had changed. She had no other problems with the claimant.

She explained that in 2005 she was the full-time Manager and there were two part-time staff. She hired the claimant to try and increase sales. The witness decreased her own hours and did not draw a salary. The financial status of the company was discussed with the staff at the fortnightly staff meetings.

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

The claimant gave evidence. She commenced employment with the respondent in October 2006. There were no issues with her work and she was a punctual employee.

In October 2007 a meeting was held with respondent's owner who wanted the claimant to change her schedule to a four-hour day, five days a week. The owner wanted the new roster to commence the following week. The claimant handed in her notice that day but retracted it later that week.

On April 4<sup>th</sup> 2008 she was asked to a meeting with the owner in a nearby coffee shop and was informed that she was to be let go. A letter of dismissal was read out to her. She could not speak, as she was very upset. There was no mention of the meeting in October 2007 or if she would restructure her hours. She was handed her payslip. The claimant told the Tribunal that if she had known previously that she would be let go she would have made arrangements and worked the rescheduled hours. The claimant gave evidence of loss.

On cross-examination she agreed that she was informed at staff meetings that the business was deteriorating. She did not tell the owner that she would "re-jig" her hours as she did not deem it necessary. The owner did not approach her after October suggesting she change her hours but had said in October that she would get back to her. When put to her she said that she had not been given the chance at the April meeting to indicate she could work anything other than three days.

#### **Determination:**

The Tribunal have carefully listened to all the evidence adduced in this case. It is stated in the contract she signed in October 2006 that:

*"The club operates a 6 day week; as a part-time employee you will be required to work within the roster subject to the needs of the business. Your exact hours of work, and breaks, will be dependent on the needs of the business and will be in line with the Organisation of*

*Working Time Act, 1997”.*

The Tribunal finds that it was not unreasonable for the respondent to dismiss the claimant in the circumstances of a deteriorating business and where the claimant was unable to be more flexible with her working hours. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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