

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM(S) OF:**

Employee

- claimant

**CASE NO.**

UD983/2008

MN923/2008

against

Employer

- respondent

under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr. D. Winston  
Mr P. Trehy

heard this claim at Dublin on 5th January 2009

Representation:

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Claimant(s) :

Mr. Ivan Williams, Ivan Williams & Co., Solicitors, 1 Convent Road, Dalkey, Co. Dublin

Respondent(s) :

Mr Peter O'Brien BL instructed by M.D. O'Loughlin & Company, Solicitors, Suite 11,  
Parklands Office Park, Southern Cross Road, Bray, Co. Wicklow

The determination of the Tribunal was as follows:-

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 was  
withdrawn at the commencement of the hearing.

### **Respondents Case**

The managing director of the company gave evidence on behalf of the respondent. The company provides crèche facilities for approximately forty-eight children. These are divided in to different classes, babies, wobblers, toddlers and Montessori. Each class has a room. The pupil teacher ratios allowed are as follows:

one teacher per three babies

one teacher per five wobblers

one teacher per six toddlers

one teacher per eight Montessori

This witness interviewed the claimant. She explained the claimant had scouting qualifications and had previously worked with children older than six years upwards, she felt she was particularly suited to working with pre Montessori children. The claimant commenced work with them on the 2<sup>nd</sup> July 2007 and worked mainly in the toddler room. She was paid every Friday and did not work a back week.

During the summer of 2008 there was a decline in their number of clients, at least eight people had pulled out their children from the crèche. They advertised for new clientele continually in local papers and arranged a small leaflet drop. They knew by the last week in August they were not going to meet their targeted numbers for starting in September. The overall number of children and their income had declined. Draft accounts showing this decline were produced for the Tribunal.

They had let go a kitchen worker and staff had reduced hours. They allowed employees go home early but did not reduce their pay to reflect this. She discussed the situation with the day-to-day crèche manager and it was decided that the manager would return to the Montessori and that this witness would take over the administration work. They had to let go two employees; the first employee worked thirty to thirty five hours per week and was normally used to cover. The second was the claimant. The claimant was decided on, as she had no experience or qualifications to work within the baby room.

This witness and the crèche manager met with the claimant on the 29<sup>th</sup> August 2008. They told her that they were letting her go, and explained that this was due to a downturn in business. The claimant became upset and left the office. They asked another employee to approach the claimant to see if she was okay, the claimant informed this employee that she wanted to go home and she left the crèche. As a result of this there was no discussion as to when the claimant was to finish her employment nor had she a chance to indicate to the claimant that if business improved that they would call her. The claimant did not return to work the following Monday and her sister asked this witness for a reference on her behalf.

Under cross-examination she confirmed that a contract of employment had not issued to the claimant. The meeting of the 29<sup>th</sup> August 2008 had not lasted long, nor had she invited the claimant to bring a representative to this meeting. Counsel for the claimant said that his client was not employed to specifically work in pre Montessori; she explained that she thought the claimant was best suited for the toddler room. The Health Board checks their employee's qualifications. Another employee who started three weeks after the claimant was kept on, she explained that this employee was more qualified than the claimant and held a nursery qualification and a fetac level five. The claimant normally worked in the toddler room.

Next to give evidence was the crèche manager. The employees normally worked in their specific rooms; the claimant worked in the toddler room. However the claimant would cover the other rooms for short periods for breaks and if staff were leaving early. To work with babies you would need a nursery qualification, and for pre and Montessori you normally would have a diploma. The claimant's qualifications transferred over to the pre Montessori. She was involved in the decision to let go the two employees. At the time they had two staff in the toddler room and the Montessori room but they only required one for each. As another employee who started about three to four weeks after the claimant had better qualifications and specifically had worked in the baby room it was decided that they would let go the claimant. The claimant holds a teaching qualification.

In the crèche environment they did not specifically discuss the differentials between the groups. She felt that they should have been more specific with the claimant while explaining they were letting her go as they needed less staff for the toddler room and that they could have been more formal in their approach to the situation. They had not met with all the staff to discuss the downturn in business but she felt all would have been aware due to the decrease in numbers at the time.

### **Claimant's Case**

The Claimant gave evidence that she commenced employment on the 2<sup>nd</sup> July 2007, which was terminated on the 28<sup>th</sup> August 2008. On this day she was asked to go to the office by a supervisor where she met with the managing director and the crèche manager. They told her that they were letting her go due to the decrease in the numbers of children attending. She asked if she could leave this meeting and she went to the toddler's room, a supervisor told her she would have to leave, as parents could not see her crying.

She recalled how she had obtained her position with the crèche. She was interviewed and at this interview the managing director had seemed pleased with her qualifications. She was never told her qualifications were not good enough. She started working in the waddler room. She was then asked if she would like to work in the toddler room so she moved to here. She would cover for other members of staff in the other rooms if some had started their shifts early or late. All staff interchanged between the rooms.

Under cross-examination she explained that staff were designated to rooms but if somebody left early someone would cover for them. There were always more than six children in the toddlers room but she had noticed a decline in her and in the Montessori room. She has qualifications for work in Montessori but none for working with babies. The employee who had started working three to four weeks after her had commenced within the baby room but had moved to the waddler room after another employee had left. She had a feeling that employees were going to be let go, but did not think it would be her. Her qualifications though Polish, are accepted in Ireland while the employee who was retained has Irish qualifications. However she does not feel she was victimised because of this as when she was let go there were still three Polish girls working at the crèche.

Next to give evidence on behalf of the claimant was her sister in law who also worked at the crèche from October 2005 till when she left in October 2008. After the claimant was let go she explained that the employee who commenced after the claimant was moved to work in the toddler room and was working there till this witness left in October. She did not know the specifics of this employee's qualification.

### **Determination**

The respondent conceded that the manner in which the claimant was let go was not acceptable; there should have been consultation with staff. However the Tribunal do acknowledge and accept that there was a genuine downturn in the business but the claimant's dismissal should have been handled better.

As a fair process was not adhered to we award the claimant €750.00 under the Unfair Dismissals Acts, 1977 to 2001.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 was withdrawn at the commencement of the hearing.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

