

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
Employee

CASE NO.
UD1107/2008
MN1017/2008

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Cagney

Members: Ms. C. Byrne
Mr. D. Moore

heard this claim at Dublin on 20 January and 11 June 2009

Representation:

Claimant: Mr. David Kearney BL instructed by Mr. Niall Ward of H J Ward & Company
5 Greenmount House, Harold's Cross, Dublin 6W

Respondent: Mr. Andrew Croughan of IBEC, Confederation House,
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant is a full-time student and he works part-time to support himself. During term-time he works on Saturdays and Sundays. During holiday time he is available to work longer hours.

He worked as a sale's assistant and there were no problems with his employment. The business changed hands towards the end of June 2007. 22 employees transferred with the business. They had some concerns so they had a meeting and were informed that their terms and conditions would remain the same. Later the new owner informed them that the business would close for a few months for renovations. The claimant was concerned, as he needed to earn the money to pay his course fees. One or 2 days work was arranged at other premises. Some employees did construction work or cleaning.

When the shop reopened he worked Saturdays and Sundays. There were no problems.

The claimant had exams early in May, so he took 3 weeks holidays from the end of April to mid May. He arranged this 2 or 3 months in advance with his manager. When his exams were finished he phoned his supervisor for his shift times for the following week. He was not on the roster. His supervisor no longer made the rosters. There was a delay of a week or two in putting him back on the roster. When he started working again there was a notice of a staff meeting on the following Tuesday. He was unable to attend the staff meeting. The company director was annoyed that he did not attend the staff meeting.

He told his supervisor and the general manager that he was available to work extra shifts during June. Then he got a paid work placement as part of his college course and was no longer available to work during the week. It was his intention to continue working with the respondent on Saturdays and Sundays as before.

One week he worked Saturday and Sunday as usual but his name was not on the roster for the following week. He phoned his supervisor to find out why. The supervisor told him to phone the director. The director told him he was being let go; he was a victim of the recession. The next weekend another person was doing his job.

The claimant's college course will finish in 2 years time. Since his dismissal the claimant had continued with his course and worked casually to support himself.

Respondent's Case

The general manager gave evidence. She is in charge of payroll and HR. She prepares the rosters and issues them on Wednesday. The week runs from Monday to Sunday. At the end of the week she checks the rosters against the clock. It was accepted that a mistake had been made in respect of returning the claimant to the roster after his leave for exam purposes, which was subsequently rectified.

In June the claimant requested extra shifts and she accommodated his request. During the summer she could almost guarantee the claimant extra shifts. Several employees take 4 weeks off to go home.

Then he got the work placement and came to the manager and said to cancel the request for extra shifts. He could now only work Saturday and Sunday mornings, where hitherto he had been available for the full weekend shift cycle. Flexibility is very important. The retail business is dynamic. The claimant was rostered for the next weekend. He is not on the final roster because he did not turn up for work and had to be replaced.

She phoned the claimant when he did not turn up for work and he told her he would not turn up unless he got the shifts he wanted. She did not dismiss the claimant.

The director gave evidence. The outlet where the claimant worked was taken over in July 07. Most of the staff work part time. Flexibility is a requirement.

Before the staff meeting the claimant contacted him saying he was sick. He wanted to have all staff together hear what they were putting in place. The claimant worked shifts after his non-attendance at the staff meeting.

The claimant indicated that he could only work Saturday and Sunday mornings. Everyone wants different weekend shifts. They could not guarantee him the shifts he requested. There was no restructuring and the claimant was not dismissed.

Determination

The Tribunal carefully considered the evidence adduced in this case. The Tribunal accepts that there was some confusion with the claimant’s roster, and while some of this could be attributed to the respondent, the varying nature of the claimant’s requests in this regard also contributed. Extra shifts were available to the claimant until he indicated he was unavailable for these following his work placement. The Tribunal is not satisfied on the basis of the evidence that the claimant was dismissed. The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

As no evidence was adduced in support of the claim under the Minimum Notice and Terms of Employment Acts, 1977 to 2007 this claim fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)