

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO.  
UD676/2009  
- *claimant*

against

Employer

- *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr R. Murphy  
Mr P. McAleer

heard this claim at Monaghan on 8th October 2009

#### **Representation:**

Claimant: Morgan McManus, Solicitors, Law Chambers, The Diamond, Clones,  
Co. Monaghan

Respondent: Maria Connolly, Solicitor, Mullaghbrack, Smithboro, Co. Monaghan

The determination of the Tribunal was as follows: -

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

The claimant commenced full-time employment with the respondent in November 1995. The claimant changed to a part-time 3-day week to facilitate the respondent keeping all the staff employed. The respondent informed the claimant that if she worked part-time hours she could claim the balance of wages from Social Welfare. The claimant received a Contract of Employment when she commenced working part-time hours. The claimant did not read the staff handbook thoroughly. The respondent was very busy in the lead up to Christmas but was quiet throughout the rest of the year. The claimant was aware that staff working in the coffee shop took extended leave for the summer period and returned to work in September, students came to work for the respondent during the summer period. The claimant had no knowledge of a system of resigning and re-applying for your job after the extended leave period has ended; this information is not contained in the staff handbook or in her contract. The claimant previously took three separate periods of extended leave without having to resign and re-apply for her job.

The claimant approached the Operations Manager who was her immediate supervisor and asked to take 3 months extended leave. The manager was annoyed with the short notice and asked why she

wanted to take the extended leave. The claimant informed her manager of the severity of her personal circumstances and stressed that she would be back before the end of August prior to the students returning to college. The claimant's manager did not refuse her request but asked her to write a letter detailing her request to the HR Manager. The claimant wrote a rough draft of the letter and asked a colleague to write out the final version. The letter produced by the respondent signed by the claimant is not the letter composed or dictated to her colleague by the claimant. The claimant did not speak to the HR Manager before she left.

On the 6<sup>th</sup> of August after returning from leave the claimant went to the respondent's premises to check her working hours for the following week. The claimant met her manager who told her he had already completed the rota for the following week and there wasn't much work available. The manager said there might be work available in a few weeks. The claimant was not offered any alternative employment. The respondent's wife walked by the claimant and casually asked if she had picked up her P45, which was at the desk. The claimant was in shock so did not approach the respondent to query her job status. The claimant would not have taken extended leave if she had been aware of the implications to her job.

On foot of an enquiry from the Citizens Information Centre the claimant was sent a copy of a resignation letter the respondent had received. The claimant had never seen this letter before and had no knowledge as to how the respondent was in possession of it. The claimant approached her colleague, the author of the letter but did not get any response from her. The claimant then phoned her colleague in work and questioned her about the letter to which her colleague replied that she could not speak to the claimant on solicitor's advice.

### **Respondent's Case**

In order to facilitate extended leave requests the MD of the respondent allowed members of staff to resign and re-apply for their jobs, as he could not officially hold their positions open. This system worked, as generally there was a position for the person to return to. The claimant's position has not been filled. Each extended leave request is considered individually on a case-by-case basis. The P45's are not posted, as the respondent requires staff to come to the premises and sign for the document.

The claimant approached the Operations Manager on Monday requesting to take three months extended leave commencing on Friday. The Operations Manager said three months was too long and he would be unable to facilitate her request. He informed her that he could not keep her job open to which the claimant replied that she was going anyway. The Operations Manager asked her to put everything in writing and suggested that the claimant apply for a job with the respondent on her return. The Operations Manager did not realise that the claimant thought that it was only her current position that could not be held open and assumed she would get a position elsewhere with the respondent. The Operations Manager did not inform the claimant that it was a letter of resignation he was requesting her to write.

The Operations Manager notified the HR Manager that the claimant had requested 3 months extended leave. The HR Manager informed the claimant that her job could not be held open for three months but she could possibly be accommodated for 1 month. The claimant was informed that she would have to re-apply for her job on her return, during two separate conversations. A second letter was requested from the claimant to ensure she was aware that her job would not be held open. The HR manager received the claimant's resignation letter on Saturday after the claimant left on Friday.

The claimant's colleague was asked by the claimant to write the letter requesting three months extended leave. This was normal practice to write and sign documents on the claimant's behalf as the claimant felt that her colleague's handwriting was more legible. The claimant dictated the letter to her colleague and read the letter to confirm she was happy with the content. The claimant did not inform her colleague that the letter was one of resignation. The HR Manager was not present so the letter was left for her to collect.

### **Determination**

The Tribunal find in all the circumstances that the claimant was dismissed and this dismissal was unfair. The reasons for this determination is that a Contract of Employment is not broken by the sheer mental exercise of an employer, the letter submitted on the claimant's behalf is not a letter of resignation and the employer never wrote to the claimant to suggest it was.

The claimant however contributed substantially to her dismissal in failing to provide her employer with any reasonable notice of her intention to take time off work and deem that a three-month leave of absence deserved substantial notice to be given to the employer.

The Tribunal finds that the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and deems that the most appropriate remedy in this case is re-engagement and order re-engagement to take place two weeks following the date of these orders.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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