

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE
MN333/2009

CASE NO.
UD335/2009

against

EMPLOYER

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L
Members: Mr W. Power
Mr O. Nulty

heard this claim at Dundalk on 19th November 2009

Representation:

Claimant:

Mr. Conor G. Breen, McDonough & Breen, Solicitors,
Distillery House, Distillery Lane, Dundalk, Co Louth

Respondent:

xxxxxx

The determination of the Tribunal was as follows:-

As this was a claim of constructive dismissal the claimant gave evidence first.

Claimant's case

The claimant stated that she commenced employment in Oct. 2007. Her contract of employment was for 20 hours per week however a pattern of working mainly Monday and Wednesday soon developed. The hours worked by claimant on these days were roughly 09:30 to 18:30. The claimant was also employed elsewhere and had informed the respondent about these other commitments. There was no conflict in relation to these other work commitments.

At some stage during her employment the claimant was asked if she could start work at 08:00 instead of 09:30 but she stated that she could not start at that time due to domestic circumstances.

During the summer of 2008 the claimant's hours were reduced but she expected that after the summer school holidays she would recommence her normal hours. However this did not happen and she alleged that the manager told her that she was no longer required for Mondays. The claimant was upset by this.

On Monday 27th Oct. 2008 the claimant was informed by phone that her hours for the following Wednesday were reduced to three hours and she believed that these were to be her hours from then on. However on arrival at the place of work on Wednesday she noticed that a recently appointed member of staff had been allocated Monday and Wednesday. The claimant informed the manager that working only three hours per week was not feasible for her, given her domestic circumstances, and therefore resigned her position.

It was acknowledged by the claimant that she had signed a contract of employment but she could not recall whether details of a grievance procedure were attached to said contract nor could she recall being given a copy of employee handbook.

Respondent's case

The first witness for the respondent was the HR Manager and she made the following assertions in relation to the case.

The witness commenced employment with the respondent in Sept. 08 as HR Manager. As part of a familiarisation process she approached the claimant and that she (the claimant) requested that she be rostered to work Mondays and Fridays only.

Subsequently the Crèche Manager informed the witness that the claimant had requested a further reduction in hours as she was only available to work on Wednesdays. This request was approved.

On Wednesday the 29th Oct 2008 the claimant was rostered to work three hours only. This was due to a bug which was making children ill and unable to attend the crèche. This was a temporary measure and normal hours were most likely to resume the following week.

The witness was informed, by the Crèche Manager, that the claimant was resigning with immediate affect from 29th Oct. 2008. There was no request by the claimant to invoke the grievance procedure.

Currently details of the grievance procedure are handed to each employee when they commence employment with the respondent but the witness could not say that the claimant received a copy as this was "before her time".

When asked if she brought pressure to bear on the claimant to start work at 08:00 she replied no.

The second witness was the Crèche Manager and she stated that she commenced employment with the respondent in Sept. 2008. This witness made the following assertions.

Shortly after commencing employment the witness asked the claimant about her hours of work and was told that she (the claimant) could only work on Mondays and Fridays. However at the end of Sept. 2008 the claimant told her that she was now only available to work Wednesdays due to domestic commitments.

On Wednesday 29th Oct. 2008 the crèche only required two staff members as there were a reduced

number of children attending on that day. In order to be fair to everyone hours were reduced across the board and the claimant was allocated three hours only for that day. However the witness never said that this was to be a permanent reduction in hours. The claimant informed her that she was leaving and did not seem to be upset. She dropped in the keys and the children gave her flowers, “she said goodbye and there was not a thing wrong with her”.

When asked what the procedure in relation to issuing employee handbook to staff was in 2007 she replied that she did not know because she was not employed by the respondent at that time. However she also stated that a copy of the employee handbook was in the hallway and readily available to all employees.

The final witness for the respondent was a Team Leader who has been employed by the respondent since 2004. This witness made the following assertions.

She was given a copy of the employee handbook when she commenced employment in 2004.

The Crèche Manager rang her to let her know that the claimant was leaving to work elsewhere.

Determination

Having carefully adduced the evidence, the Tribunal finds that the claimant resigned of her own volition and there are no grounds for a claim of constructive dismissal. Therefore the claim under the Unfair Dismissals Acts, 1997 to 2007 fails.

The claim under the Minimum Notice And Terms of Employment Acts, 1973 to 2005 fails as the Tribunal is satisfied that the claimant resigned without giving notice with effect from 29th Oct. 2008.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

