

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - *claimant*

CASE NO.
UD733/2009
RP807/2009
MN752/2009
WT316/2009

Against

EMPLOYER – *respondent A*

EMPLOYER - *respondent B*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms M McAveety

Members: Mr M Murphy
Mr O Nulty

heard this claim at Mullingar on 15th July 2010

Representation:

Claimant(s) : Mr Shane Geraghty BL, instructed by:
Ms Jenny Devereux
E C Gearty & Co, Solicitors
4/5 Church Street, Longford, Co Longford

Respondent(s): Respondent A:
Mr Alex White, instructed by:
Mason Hayes Curran
South Bank House, Barrow Street, Dublin 4

Respondent B:
Ms Claire Hellen
IBEC
Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

Preliminary points were raised in regard to the claimant's service and whether the claim was made in time. Both respondents disputed that they were the employer.

Claimant's Case:

The claimant's appeal for a redundancy payment was withdrawn during the hearing.

The claimant was employed as a part-time counsellor in a community college from September 2005. A representative of a School Completion Programme for the position interviewed her. The schools completion programme was not named as a respondent, but the Representative of the scheme was present for a separate case being held simultaneously. Two hours per week was agreed initially which would increase to eight hours when an after schools programme commenced. She was to work as an assistant to another counsellor. She had no written contract of employment. She understood that Respondent A was her employer as that was the name on her payslip.

The claimant finished each year in May and returned at the end of September or the beginning of October. In 2007, when she had not heard from the school by the end of September she contacted the Principal. She suggested that the claimant get in touch with the Representative of the School Completion Programme. The Representative did not know what was happening with the Programme that year so the claimant wrote to respondent A. She did not receive a response. She phoned but the school secretary could not provide details regarding her terms and conditions.

She had a series of meetings with the Representative of the Programme between November 2007 and February/March 2008. She met the Representative on November 15th 2007 at the offices of respondent B. She was told that the programme was being discontinued and that there was no longer any work for the claimant. They agreed to meet again to discuss the situation further. On November 29th 2007 the Representative told the claimant that she would try to find work for her. She worked for four hours in February 2008 for the Representative. Her last contact with the Representative was in March 2008. She brought a claim to the Tribunal on March 31st 2009.

During cross-examination she agreed that the Representative informed her in November 2007 that the programme was not continuing and they discussed the possibility of the claimant researching a young mothers' programme. They met on December 6th 2007 to discuss the research. The claimant contended that she contacted the Representative in March 2008 to find out why the Schools Programme had ceased. She believed that the Programme had continued.

Respondent's Case:

Respondent A contended that the last time the claimant worked was in May 2007. She was told that there was no work available. In March 2008, she was offered one hour's work per week, which she did for a week or two and then discontinued. Respondent A contended that if the claimant's employment ceased in May 2007 then her application was out of time and if she finished in March 2008 she did not have the service.

The Representative of the School Completion Programme gave evidence that the time sheets were submitted to her and that she forwarded them to Respondent A for payment. A standard form from respondent A was used. The claimant's first time sheet was submitted in October 2005.

She contended that she was not responsible for what programmes ran in the school. She met the claimant in November 2007 to inform her that the programme was not continuing. They discussed another possible project but it was only in the planning phase. She suggested that the claimant plan the project and offered the use of the office if she needed to call anyone. They kept in contact but in March 2008 the claimant phoned and said that she had relief work elsewhere. The witness told her that the programme could be parked and that she could pick it up later if she wanted. The witness understood that Respondent A was the employer as they administered the programme.

Determination:

Pursuant to the provisions of Section 8(2) of the Unfair Dismissals Act, 1977 as amended by Section 7 of the Unfair Dismissals (Amendment) Act, 1993, a claimant must bring a claim for Unfair Dismissal to a Rights Commissioner or the EAT within six months of the date of the dismissal, which said six months is extendable to a period of twelve months if the claimant can prove that there are exceptional circumstances which prevent him/her from lodging his/her claim within the six month period.

In this particular case, there is considerable dispute as to what in fact is the date of termination of employment. On the claimants own evidence, she phoned the Respondent in March 2008 advising that she had secured relief work elsewhere. Prior to that, she had been told that the programme was being discontinued. On November 29th 2007, it was indicated to her that an attempt would be made to find further work for her which culminated in four hours work in February 2008. The claimant lodged her claim with the Tribunal on March 31st 2009.

The Tribunal, whilst not actually making any finding as to the actual date of termination of employment, unanimously agree that the latest possible date to be considered as the date of termination was the date in March, 2008, when the claimant phoned saying she had found relief work elsewhere. Therefore, a claim for unfair dismissal should have been lodged with the tribunal within a period of six months from that date. No evidence as to exceptional circumstances was adduced by the claimant, nor was any such claim or plea made by her.

In the circumstances therefore, the Tribunal finds that the claimant's case is out of time.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)