

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1111/2009

-claimant

against
EMPLOYER

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Dr. A. Courell B.L.

Members: Mr P. Pierson
Mr O. Nulty

heard this claim at Longford on 25th March 2010

Representation:

Claimant: Ms Kara Turner BL instructed by Ms Emira Flood
Solicitor, Nooney & Dowdall, Solicitors, Mary Street, Mullingar,
Co. Westmeath

Respondent: MO'C and TMcM from respondent

Background:

The respondent manufactures computers / computer products. The claimant was a production operative and worked on the assembly line. The case before the Tribunal is one of constructive dismissal.

Claimant's case:

The Tribunal heard evidence from the claimant. She worked there from November 2003, initially on a contract basis. Her line leader was MR, her production manageress was TMcM and her supervisor was KMcM. Her normal working week was Monday to Thursday 8.30 to 5.00 pm and Friday 8.30 to 4.00 pm. She had twenty days annual leave allowance and did not need to complete documentation for annual leave purposes. The respondent was open up to Christmas Eve and the employees' return on St. Stephens's day. She had plans for family time at Christmas 2008 and sought four days off. The employees were called to a meeting on 10th December 2008 and they were asked what days they could or could not work at Christmas 2008. She was unable to say exactly what days she was or was not able to do. She told her production manageress that she would tell her the next day. On 11th December she told TMcM that she could not work 29th 30th 31st December and 2nd January. TMcM told her that they would speak about it again. On 19th December there was a meeting with production group. TMcM asked all to remind the supervisor KMcM about their leave. She approached her supervisor on 19th December to remind him the dates she could not come into work and he said "that's fine"

and wrote the dates on his hand. She understood that everything was in order.

On 23rd December it was normal to remind her supervisor of the holidays so she approached him. He insisted that she had to go to TMcM's (production manageress) office after her break. TMcM and KMcM met her in the office and they said that they could not recall her asking for leave and they had no record of the request. She told them that she had asked both of them. They told her that if she was not in work then the production would cease, and they told her that three other Irish staff were out on one of the mornings. TMcM went to her desk and told her "she had lots of other CV's". TMcM asked her if she could come back to her with alternative days. She felt that her job was under threat. She told TMcM that she could return on 04th January. TMcM said that was not good enough and repeated that she had other CV's. She felt that this implied that she would be replaced. She was shocked and upset. Up to this time she had worked nine consecutive days and she could not understand why they had no record. Prior to this situation operatives from another department would be called in to help with the work. TMcM told her that if she could not give her alternative choice of days then she had other CV's.

She went away and made a phone call to her husband; he confirmed that they had holiday plans with their family for Christmas and the New Year. She returned to TMcM and could not find her. She asked KMcM and he told her that TMcM had gone to Athlone and did not know when she would return. She returned to work and her colleagues saw that she was upset and distressed. She was not able to concentrate. She went to the maintenance manager to try and explain why she could not work there and told him that her position was under threat because of the way she was spoken to in the office.

She clocked out and was leaving the premises and saw KMcM but was too shocked to stay and felt it had "gone beyond that". She had decided to leave after the meeting as it was implied that her job was under threat as KMcM had said she had plenty of CV's. It was a huge decision as she was the sole "bread winner".

There was a previous incident on 16th December whereby operatives were asked to come into work on 17th December at 6.00 am. She told her line leader that she was unable to do this. On 17th she was called to TMcM's office and she was asked by KMcM and TMcM why she had not arrived to work at 6.00. She told them that she had a young child and would have had to get him up very early. She was told that she had to be in work at 6.00 am. She reminded them that her hours were 8.00am to 5.00pm. It was implied that she was "not pulling her weight". She reminded them that she had worked overtime and had helped other work areas to keep production going. She had worked overtime on 17th December. She had not been given anything in writing that her hours were changed.

On 23rd December when she was leaving she did not approach TMcM as it had been made clear that there would be no more compromise.

After she left she phoned the MD of the respondent and told him that she was disgusted with their treatment of her. She had also spoken to the maintenance manager that same day and told him she would be seeking legal advice. He asked her if she would speak to TMcM, but she told him that she was too shocked.

Respondent's case:

The Tribunal heard evidence from TMcM. She explained that over the Christmas period the days

were regarded as normal working days within the respondent's calendar. They manufacture for the lottery industry. In the employee induction meeting they outline that the respondent's contract with their customers includes a late penalty clause.

Two weeks before Christmas they called the staff to explain the need to work over Christmas. They explained that they would be flexible but that they would need the employees to be flexible also. The claimant did tell them that she would revert to them regarding working arrangements. On the morning of 23rd KMCM did tell her that the claimant told him she would not be able to work certain dates. They knew that the claimant worked on a key area and they told her that she was telling them at a very late stage. They did not tell her that they would terminate her employment and the amount of work and logistics would support this position. To deal with the situation they had to look at the work pool to solve the matter. The claimant did say that she would return to work on 04th January and they did tell her to take holidays until the 05th January.

On 23rd she had to leave the workplace for work related business for one hour. She did see the claimant but had not spoken to her. KMCM told her that the claimant had spoken to the MD and told him that she had spoken to her solicitor and was taking a constructive dismissal case; she felt that she could not speak to the claimant if she had spoken to her solicitor etc. she thought the situation was a misunderstanding and that it could have been resolved if they had talked. It was a pressurised time in the company as they had to supply lottery units to customers and there were penalties if they did not supply the units on time.

They have a grievance procedure in place and the claimant could have approached either her or KMCM.

The witness explained that KMCM was no longer with the respondent company and was not going to give evidence.

Determination:

The Tribunal determines that the claimant was constructively dismissed. There had been a discussion between the claimant and her supervisor regarding annual leave. There was a question mark as to whether the claimant had been asked to work over the Christmas / New Year period. Also there was inaction on behalf of the respondent after the 31st December. However, the Tribunal finds that there was contribution on the part of the claimant. The Tribunal also determines compensation to be the most appropriate remedy. Accordingly, the Tribunal awards the claimant the sum of €9,500.00, as compensation under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)