

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

UD2206/2009
EMPLOY *claimant*

RP2501/2009
WT927/2009

against

EMPLOYER *respondent*

under

**ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr M. Noone
Ms M. Maher

heard this claim at Dublin on 12th January 2011

Representation:

Claimant(s): XXXXXXXX

Respondent(s) Ms. Catherine Day, Peninsula Business Services (Ireland)
Limited, Unit 3 Ground Floor, Block S, East Point Business
Park, Dublin 3

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant told the Tribunal that he was employed as a teacher with the respondent from July 2003 until July 2009. He had a good relationship with the respondent. He worked Monday to Friday for eighteen to twenty hours per week and he also spent time on preparatory work and seminars. July and August were the busiest periods. The period before Christmas until spring was quiet. The claimant's hours of work were reduced. He approached the director of studies regarding the situation. He was informed that things were quiet. He had to go to Social Welfare to obtain job seekers allowance.

He told the director of studies in May 2009 that he was going to a wedding in Spain in July 2009 and that he would be away for two weeks, he then changed it to one week.

Extra staff were needed in summer 2009 and seven staff were taken on in June 2009.

August was a very busy month and staff were not allowed to take holidays in July and August. When he returned from holiday he telephoned the school and he was informed that there were no hours for him. He received no money that week. He specifically stated that he was on holidays for one week. The respondent hired more teachers and he felt that this was a total contradiction. He was the longest serving member of staff. His work was given to teachers who came in off the street.

In August 2009 he was given full time work for a couple of weeks. From the 14 September to 21 September 2009 he had no work. He had to go on the dole. The teachers were the last to find out about anything and matters were dealt with on a casual basis. He approached the director and he asked for work on a week on/week off as he felt the situation was becoming farcical. The director told him that this was not possible, this was the way it was and the respondent did not have enough hours for teachers. Each year the respondent offered a full time fixed contract of nine months duration. These positions were advertised internally and externally. He felt he was better off with a part time contract and he did not apply for a full time position. He earned approximately €19 per hour for part time work and €12/€13 was the rate paid to full time teachers. He was being offered four hours a week and he could not live on that. It got to the stage that he was no longer valued in the respondent; he had a good relationship with students. He felt he was being completely ignored and was not given a fair amount of hours. He could get a call at weekends that there were no hours available and he felt the respondent was very casual. Other teachers did not have that problem. The teachers that were taken on got more hours than he did and that was humiliating for him. He was not offered redundancy.

He handed in his resignation on 24 September 2009. The respondent contacted him and asked him to reconsider his position and he felt that due to the way he had been treated he could not see how the grievance procedure could improve the situation. He had lost trust in the respondent. In 2010 he obtained some hours in a language school but they had to let him go. After that he was in receipt of social welfare. He emigrated to the UK in April 2010.

In cross examination when asked about redundancy that he applied for on 24 September 2009 he stated that there was no communication with the respondent and maybe it was a good opportunity to seek redundancy as there was no work available.

In summer 2009 there was no sense of organisation on the respondent. When put to him that the respondent contacted him at the end of the first week of his holidays and that he did not respond he replied the school was aware of the date he was returning from holidays. He did not pursue the grievance procedure, as he had no trust in management anymore.

In answer to questions from the Tribunal he stated he was not a member of a union and before submitting his resignation he spoke to a couple of people. He did not make the decision to resign lightly. He signed a contract of employment and he read and understood the contract.

Respondent's Case

FD told the Tribunal she was acting director of studies, she was in charge of teachers and student welfare. She organised, the roster, timetable and classes. The claimant commenced employed in June 2003. July and August were the busiest times in the school. The numbers of hours per week depended on student numbers. Students started on Monday and new classes started on Tuesday. The claimant was paid €19.38 per hour. In 2009 there was a decline in the number of students attending the school.

The respondent had an open door policy and if the claimant had a problem he should have spoken to her or to her boss. The claimant told her he was taking two weeks holidays in July and he then told her he was taking one week. She telephoned him the first week of the holidays and he did not respond. The claimant submitted his resignation on 24 September 2009. She was shocked and surprised at this. She spoke to him during the week but he would not discuss the matter with her. She sent a letter to the claimant on 25 September 2009 and she asked him to reconsider his position and requested him to meet with her on 30 September 2009. He did not meet with her on 30 September 2009 and she rescheduled the meeting for the 6 October 2009 but he did not attend.

In cross-examination she stated that it would not be very good for students if the claimant worked a week on/week off. She was not sure of the rate of pay for teachers who were employed on a fixed term contract. There was a lot of interest from external candidates for the job and they had second jobs. Temporary teachers were all laid off at the end of September 2009.

DF a senior teacher and assistant director of studies at the time the claimant was employed told the Tribunal that he had a good working relationship with the claimant. He was quite approachable and teachers came to him with issues. He signed some of the social welfare forms for the claimant. He told the claimant that he could not take time off in July and August, as it was extremely busy. That was in the handbook and he told the claimant he should know this. He called the claimant on the Friday evening of the first week of his holidays. Three hundred students were arriving and he along with the director of studies worked all weekend. He spoke to the claimant on the following Tuesday and the claimant asked about his classes. There was no agreement for the claimant to take time off. He was not aware that the claimant was in the country in week 30. There was no element of trying to punish the claimant. The claimant was given work in week 39. He was surprised to receive the claimant's letter of resignation on 25 September 2009. If the claimant had a problem he could have gone to the director of studies.

In cross-examination he stated that annual leave could not be taken in July and August. Approval for annual leave had to be granted by the acting director of studies. A form was in place for applying for annual leave. As far as he could recall he thought that the claimant had told the respondent he was taking two weeks holidays but he changed his mind. The respondent endeavoured to contact the claimant to establish if he was available to teach the second week. Other teachers as well as the claimant expressed dissatisfaction with the hours they were granted

Determination

The claim under the Unfair Dismissals Acts, 1977 to 2007 was one of constructive dismissal and the onus of proof was on the claimant to establish that his decision to resign was reasonable. He did not reply to the respondent's letter of 25 September 2009 requesting him to reconsider his resignation and to attend a meeting on 30 September 2009 to discuss the matter. He did not reply to the respondent's letter of 1 October 2009 requesting him to attend a meeting on October 6 2009. The claimant did not invoke the grievance procedure with anyone in the respondent.

The Tribunal cannot accept that the claimant acted reasonably and finds that his claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

A redundancy situation did not exist in the respondent and the claim under the Redundancy Payments Acts, 1967 to 2007 fails.

No evidence was furnished to the Tribunal in relation to the Organisation of Working Time Act, 1997 and no award is being made under this Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)