

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
-claimant
UD928/2009
MN626/2010
WT412/2009

against

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 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: Mr R. Maguire, B.L.

Members: Mr M. Noone
Mr T. Brady

heard this claim at Dublin on 4th June 2010 and 2nd November 2010

Representation:

Claimant: Ms Helena Guilfoyle, Crumlin C I C, 146 Sundrive Road, Crumlin, Dublin 12

Respondent: IBEC, IR/HR Executive, Confederation House,
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

The claim under the Organisation of Working Time Act, 1997 was withdrawn on the first day of hearing.

Preliminary Issue:

Dismissal as a fact was in dispute in this case.

It was the respondent's position that the claimant continued to be employed by the respondent company but had refused offers of work from the respondent.

It was the claimant's case that his supervisor informed him that he was no longer required. The claimant also stated that the duties given to him towards the end of his work for the respondent

differed from his normal duties and his work was over-monitored.

The claimant commenced employment with the respondent as a cleaning operative on 1st October 2007.

Claimant's case

It was the claimant's position that he worked five hours each day from 5-10pm. The hours of work suited him for personal reasons and were not an issue for the respondent company. The claimant stated that when he attended for work on 17th February 2009 his supervisor informed him that he was no longer required, as another employee was returning to their position within the company. The claimant subsequently wrote a letter to the respondent company, seeking a contract, terms and conditions of employment, as well as reasons for his dismissal. The last day the claimant worked was the 3rd April 2009. The claimant alleged that from 17th February 2009 to 3rd April 2009 his work was over-monitored and he was given duties to do that differed from his normal duties.

After the 3rd April 2009 the claimant received a telephone call from the respondent company stating that work would be offered to him as soon as it became available. He was subsequently offered and accepted a day's work on 16th April 2009.

The claimant stated that he had received one offer of further work from the respondent company. The hours of work offered to the claimant were from 2-8pm. The hours of work did not suit the claimant due to personal circumstances. The claimant did not accept the offer of work and submitted his claim to the Tribunal.

The claimant outlined subsequent telephone calls from the company and a meeting with a manager on the 18th May 2009.

Respondent's case

It was the respondent's position that the claimant was employed to do cover work, as and when this work became available. As such the claimant's hours and location of work were variable. From 1st October 2007 to 10th May 2009, the claimant worked only 46 weeks out of a possible 84 weeks.

In February 2009, the cover work the claimant was performing came to an end. It was agreed with the claimant that he would be offered other cover work, as and when it became available as had been done in the past. In April 2009 the claimant was offered a position working Monday – Friday from 2-8pm. The claimant refused this offer. A further offer was also made to the claimant on 7th May 2009, but the Claimant did not accept this offer either.

Determination:

The Tribunal has carefully considered the evidence adduced and the submissions given. The claimant worked for the respondent after the conversation in which he stated he was told that he was no longer needed. He continued to be accommodated by the respondent by being given offers for work. The respondent did not consider him dismissed and made this known to him. The claimant did not accept the later offers of work.

In all the circumstances the Tribunal finds that the claimant had not been dismissed either unfairly or constructively. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the claim under the Organisation of Working Time Act, 1997 are dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)