

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:
EMPLOYEE

CASE NO:
UD101/2010

- *appellant*

against

EMPLOYER

- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Lucey

Members: Mr. A. O'Mara
Ms. H. Henry

heard this appeal in Limerick on 18 July 2011

Representation:

Appellant: In Person

Respondent: Mr. Donal O'Rourke BL instructed by:
Alex O'Neill, Solicitor, 22, Barrington Street, Limerick

The decision of the Tribunal was as follows:

Respondent's Case:

The former Principal of the school gave evidence. The respondent was a small private school funded solely by the fees paid by the parents of the children who attended there. The claimant was employed as an Afterschool Assistant, which was a supervisory role. Her role was the "*provision of variety of opportunities towards the stimulation and fulfilment which will enable a child to develop his /her natural powers at his / her own rate to his / her fullest capacity. The assistant will consider the physical, emotional, intellectual, social and spiritual development of each child.*"

An Afterschool Co-ordinator was also employed to manage all the afterschool activities. The Co-ordinator's role was to organise the whole programme including a timetable of all activities for afterschool in conjunction with the Principal, issue the timetables to parents, liaise with special needs teachers, book in

all students, update all student's records, calculate bills, collect payments from parents and make bank lodgements.

The witness explained that the claimant was paid € 12.65 per hour for a twenty-four and a half hour week. She was not paid for any school holidays. In 2009 it became apparent that attendee figures were declining. The number of children using the main afterschool facilities went up and down on a daily basis. The figures for children attending the school were also declining. On June 9th 2009 the claimant was put on lay-off and issued her P45. During this month the Co-ordinator was made redundant.

The witness discussed the matter with the Board of Management about the situation. The witness discussed the matter with the claimant over the telephone on August 8th 2009. She explained that numbers were declining, two people would not be required to oversee the facility and it appeared her services would not be required from 12.30 p.m. from September. A letter of the same date was sent to the claimant explaining the situation and offering her five hours work per week, this being one hour a day for five days. She was also informed that as this represented a loss of 50% of her working hours they would offer her statutory redundancy.

On August 11th the claimant rang the witness, declined the offer of the five hours a week and accepted the offer of a redundancy payment. On August 21st the claimant attended the respondent's accountant's office, signed her RP50 form and was given her redundancy payment of € 2,234.81. She also signed a letter to state she was not accepting the offer of five hours work a week and was accepting a redundancy payment instead.

The witness stated that she covered the co-ordinator duties in the afterschool facility from 3.00.p.m. onwards. However parents were unhappy with the situation and complained that they could not discuss their children's requirements in that environment. She went to the Board of Management and it was decided to hire another Afterschool Co-ordinator but not an Afterschool Assistant and there had not been one hired since.

On cross-examination she stated she had not told the claimant there would be no afterschool facility, had offered her five hours a week or redundancy. When asked she stated that she had no records of the telephone conversation she had with the claimant.

The respondent's payroll Administrator gave evidence. She had been present when the claimant came to the office to accept her redundancy payment. The former Principal and the claimant attended. They went through the RP50 form, the claimant took the cheque and signed the letter. The witness stated the claimant seemed to be happy enough and did not express any grievances.

A parent of one of the attendees and member of the Board of Management gave evidence. They explained an Afterschool Co-ordinator was employed but attendee numbers had completely declined. The respondent only expected between seventy to seventy-five attendees in 2011.

Claimant's Case:

The claimant gave evidence. When school finished up in June 2009 the former Principal wished her well and told her she would see her in September. On August 14th 2009 she received a call informing her things were "not good" and the Afterschool Co-ordinator had been let go. She was also informed the most hours she could be offered was one hour a day. She asked could she think about it.

In Late August the former Principal again got in touch with her and informed her there may not even be an offer of one hours work a day as there would no longer be a position of Afterschool Assistant. She was offered a redundancy payment. She told the Tribunal that she did not ask any questions as it "seemed to be a done deal". The claimant gave evidence of loss.

On cross-examination she stated that she had not received the letter dated August 6th 2009 explaining the situation and offering her five hours work or redundancy, she had not spoken to the former Principal until August 14th 2009. She explained that she could have carried out the role of Afterschool Co-ordinator. She again explained that she had no choice in the matter but to take the cheque for redundancy. She had no knowledge of the Co-ordinator position being replaced and would have applied for the position if she had known of it.

Determination:

The Tribunal have carefully considered all the evidence and submissions made by both parties in the case. The Tribunal find that a redundancy situation did occur and that this was not a case of unfair selection for it. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)