EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF: CASE NO.

EMPLOYEE UD1488/2010
WT615/2010

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath

Members: Mr J. Goulding
Mr F. Keoghan

heard this claim at Dublin on 13th December 2011

Representation:

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Claimant: Hughes & Liddy, Solicitors, 2 Upper Fitzwilliam Street, Dublin 2

Respondent: Ms. Theresa Ham, Kingsford, Solicitors, Suncroft Avenue, Strand Road, Portmarnock, Co. Dublin

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant CS gave direct evidence that she commenced employment with the respondent in September 2007. CS was a manager of an after school care facility with two junior staff.
She reported to the owner KC.
All employees received a letter dated 23rd March 2010 advising of a 10% pay-cut across the board effective from 12th April 2010.
CS felt that the business should have looked at other options, she advised KC of same in a letter of 9th April but there was no compromise. At a general meeting of all employees on 12th April CS was asked to stay behind after the meeting. KC threatened to move her to other locations and said that she would seek legal advice and meet again. The meeting with legal advisors never happened.
On 13th April CS advised her employer that she would not accept the 10% pay cut.
CS received a letter on 16th April advising her that she would be going on short time and moving to

a new location. Her short time hours (reduced hours) were equivalent to the 10% pay cut. This was to be implemented as and from 17th May 2010.
KC was aware that she did not get on with the manager at the new location.
CS offered her letter of resignation 22nd April, this was acknowledged on 28th April. She had never been advised of a grievance procedure and felt it was only put in place at the time of her resignation.

Under cross examination CS accepted that her contract said that she may have to change location. There was 13 days between the request for a pay cut and her tendering her resignation. She felt backed into a corner, she was given 24hours to decide if she was taking a pay cut. She offered to take a 5% pay cut and felt it was a compromise as she was doing a good job.
CS was not aware that a HR advisor was on board.

KC in her sworn evidence stated that she had 19 staff in total. There was a total wages bill of approx. €250,000 and savings of at least €25,000 had to be made. While there were 11 centres in the business operation, their busiest and most profitable were no longer propping up the others,many parents were out of work and had no need for the after care centres anymore.
Nobody was happy with the pay reduction and the claimant made her views known. Centres would have had to shut down or people would have to be let go if the pay cut was not introduced.
KC did not make any decisions of her own accord. She enlisted the help of a HR company and they advised on an RP9. On receipt of CS's resignation she was asked to reconsider, KC did not want to leave things the way they were and maybe if all parties had sat down formally it could have been worked out.

Determination
The tribunal has carefully considered the evidence in this matter. The claimant comes before the Tribunal claiming to have been constructively dismissed. In these circumstances the onus rests with the claimant to demonstrate to the Tribunal that she has acted reasonably in tendering her resignation. In particular, the claimant should show that she had no alternative options and that the situation was such, that she could no longer reasonably be expected to continue in the workplace.

It is common case the employer was implementing a 10% wage reduction in the workplace. The employer was attempting to impose a new pay regime in the workforce so that everybody would be asked to take an equal share of the burden. This was largely to avoid the necessity of targeting a few people for redundancy.

The Tribunal recognises the soundness of this policy where all too often the Tribunal deals with claimants who feel they have been unfairly selected for redundancy precisely because the employer has no option but to restructure to save as many jobs as possible.

The Tribunal, therefore, can have no difficulty with the employer faced with a well catalogued downturn in business in going to the workforce with a plan to seek a 10% decrease in wages.

Quite rightly, the employer recognised that this would not be met with any enthusiasm amongst the staff but the employer did not seem to have been well prepared when faced with an absolute refusal to take such a cut.

To her credit, the claimant had indicated that she tried to negotiate her position and indeed agreed a 5% reduction. This was not availed of by the employer who seemed determined to implement a flat

reduction across the board.

The Tribunal does recognise that the employer would have been placed in an invidious situation if it was to accept that the claimant would only take a 5% wage reduction whilst the balance of the workforce had to take a 10% wage cut. This could have led to even more difficulty than the employer was already faced with. In this regard the employer said her accountants had advised up to a 15% reduction.

The employer sought to put the claimant on short-time which had the consequence of reducing the claimants hours of work such that she would end up on a 10% wage reduction.

It is noted that giving an RP9 in the manner it was may not have been necessary in the circumstances. The contract of employment appears to have allowed for a reduction in hours by reason and factors beyond the control of the employer. Ultimately the RP9 appears to have served a foot of advices received from a HR consultative firm which had been consulted by the employer.

It was recognised by the employer that the RP9 was a conduit for allowing for a redundancy situation should that become necessary further down the road.

There was enormous conflict in the evidence adduced by the claimant and the employer. Their interaction was uncorroborated by any further witness. Ultimately, the Tribunal need not make a decision on the veracity of either witness and the Tribunal must look at the overall situation with a view to deciding what was objectively reasonable.

The Tribunal finds that the claimant had not acted reasonably in assuming that her refusal to take a 10% wage reduction, (in the collective circumstances outlined) would not have a knock on effect. The employer may not have had excellent communication skills but she was faced with a difficult set of circumstances which had been addressed for the greater good and fairness of the whole of her workforce.
The claimant's resignation was premature. She had not given the new arrangement a chance and had not triggered the grievance procedures which may have yielded a result.

The claimants claim must therefore fail.

No evidence was adduced in relation to the claim under the Organisation Of Working Time Act, 1997 and therefore this claim is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)