

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD701/2010

against

EMPLOYER
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr C. Lucey
Mr N. Dowling

heard this claim at Dublin on 22nd July 2011 and 27th January 2012

Representation:

Claimant: In person

Respondent: Ms. Sinead Mullins, IBEC, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Claimants Case:

JG began his employment as an English teacher for the respondent college on a full time basis in March 2007. In August 2008 the English language centre closed down and some positions were made redundant. The buildings being used by the college reduced from six to three.

JG was asked to return in September 2008 to teach students English for academic purposes.

The hours offered were 1.5 hours Monday to Thursday and 8 hours each Friday.

This then increased to four days a week.

In 2009 he worked 2 weeks of 30hours and 1 week of 20hours, he was still working above the standard 23hours.

In August 2009 JG had a meeting with the Dean of the college. He informed the Dean that he had been working full time since 2007 and requested clarification of his job and responsibilities. He asked for a contract, details of his pension and information on sick pay. JG also pointed out issues with student attendance and that they must have 15 hours minimum to comply with regulations.

On his return from holidays he discovered that his hours were reduced to just one day, 7.5 hours per week.

JG felt that it was because he had asked questions and pointed out issues with the students that led to a reduction in his hours.

He wrote a letter of resignation on 9th October 2009.

Under cross-examination JG said that while the English language had closed down, the college was expanding. His understanding was that he would have full time work.

He was on holidays from 7th September and returned to work on 21st September.

His letter of resignation was written on 9th October.

Asked about the meeting with the Dean in August and what was discussed JG stated that there were a number of meetings. The contact he mentioned with the Dean was not a meeting, he just approached him. Advised that the Dean was on leave until 28th September and no further meeting had been requested JG stated that he "didn't know".

JG also stated that he discussed the situation with the Registrar on many occasions. The Dean was a busy person and it was better to discuss issues with the Registrar rather than wait hours to speak with the Dean.

He did not use the college's grievance procedures.

Respondents case:

The Dean gave evidence that the college was "a not for profit institution". There was a decline in students through the 2000's and the school eventually closed in 2008. Up to twenty people lost their jobs. JG was hired as an English teacher in 2007 and in 2008 was asked to look after a different group/level of students for a maximum of one year but the time scale was never determined. The job was to give some students extra hours to improve their English for academic purpose.

He recalled the meeting with JG and the Registrar on 20th August. The claimant did look for written terms of employment / contract to give him something for the future.

There was definitely no mention of pay scales, it was a non-state institute and there were no pay scales.

JG had planned a holiday so he was told to finish up with current students and when he returned hours could be determined by demand for the course. The course itself should have finished in the previous May but some students needed extra tuition and were persuaded to stay for an extra semester.

There was only one class for students for September as students would have to pay for it.

The class was shared between JG and the Registrar.

The hours offered to JG could only be 8 hours on a Friday; it would be better for him to do it in one day rather than coming in for 2 hours over 4 days.

Due to an illness in the Registrar's family his hours were offered to JG until December but JG wanted a full time contract.

On 9th October the claimant requested redundancy. The position was not redundant and the college wanted him to remain until December.

The Registrar in his evidence stated that the claimant reported to him. He agreed with the evidence from the previous witness and while poor attendance was discussed with him by the claimant it is a normal situation in any college.

JG was unhappy with the hours offered but it was all they could do, student numbers had dropped. It was not a redundancy situation as another teacher had to be taken on to replace him. He was getting additional belonging to the registrar when he handed in his notice.

Determination:

The Tribunal carefully considered the evidence adduced during the course of this hearing.

The onus of proof is on the claimant to show that the termination was due to the conduct of the respondent, leaving the claimant with no alternative or that it was reasonable for the claimant to terminate the employment.

The Tribunal accepts that the respondent in this matter acted reasonably in the circumstances. It is not accepted that the claimant was forced to resign from his position.

The Tribunal finds that the claimant was not constructively dismissed and therefore his claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

