

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD2285/2010
RP3083/2010
MN2233/2010
WT1016/2010

Against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 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: Ms P. McGrath

Members: Mr C. Lucey
Mr N. Dowling

heard this claim at Dublin on 3rd April 2012

Representation:

Claimant: Colm O'Cochlain & Company, Solicitors, First Active House,
Old Blessington Road, Tallaght Village, Dublin 24

Respondent: Mr. Peter Flood, IBEC, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Claimant's case:

The Tribunal heard that the claimant was initially employed as a relief worker with the respondent in 2007. The work involved overnights with 14/15 clients, she covered sick leave, annual leave. This continued for the first year of employment. The claimant was then asked to do outreach and project work. These positions were totally different to her original position and involved day work. The claimant covered 3 periods of between four and six months on each occasion. Her hours were up to 60 hours per fortnight and she was able to build up relationships and have

interaction with the clients.

A memo circulated advertising for key/project workers in early 2010. The claimant considered and was lead to believe that getting the job was a formality, as it was work she was doing already. Later the claimant found out that she hadn't got the interview from her new manager YB. She was offered 50 hours a month on relief work at a lesser rate of pay and asked to train in the girl who got the job. She felt as if she had been demoted and was very upset. The claimant went on sick leave. She later received a letter outlining that she was on a panel for any future positions. A few weeks later she had heard nothing about hours and had to look for another job.

Under cross examination the claimant agreed that her hours varied and that she had not received her qualifications by the time the interviews took place. She received a letter of 22nd April advising her she was on a panel and could seek feedback about her interview.

She remained on sick leave and requested her P45 in June 2010. This was to allow her to sign on for benefit, on hindsight she stated that she should have requested a P60.

Respondent's case

PMcK for the respondent stated that they provide treatment and rehabilitation for clients.

The claimant was part of a panel of 8 workers who were called on to cover shifts of sick leave, annual leave and other absences. Her original shift was a sleep over shift.

In 2009 the respondent organisation received a cut back in funding and needed to reduce costs.

The relief worker budget was high and it was decided to fill vacant posts rather than continue with the relief workers. A new night worker post was introduced at a lesser rate of pay.

The posts were advertised and about 70 applications were received, these were shortlisted to 22.

Of the 22 listed 6 were current relief staff and included the claimant. Interviews were held on 1st and 2nd of April 2010.

Scoring was done after each interview based on ten questions, each question received a score between 1 and 6 and the total was used to generate assessment guides, based on qualifications, experience, suitability etc., The claimant was advised on 8th April that she had been unsuccessful but that she was placed on the panel and would be retained as a relief worker. This was confirmed by a letter dated 22nd April 2010.

Determination

The Tribunal has carefully considered the evidence adduced. The claimant was taken on by the respondent body as a relief worker in and around November 2007. The claimant has been described as a most satisfactory employee who demonstrated flexibility and a willingness to step up to the plate when asked by her employer to cover co-employees annual leave or other absences.

The claimant's contract of employment as drafted in 2007 does not guarantee minimum hours and the job of relief cover was based on the premise that the claimant would be called in for shifts as and when required.

By 2008 – 2009 the claimant seems to have performed on 3 separate occasions the job of project and or outreach worker. These positions were radically different to the position of relief worker insofar as the hours worked were by day (and not by night) and the claimant was allowed to develop one on one relationships with clients for the purpose of counselling and therapy.

The claimant had been invited to take on these roles in circumstances where the positions had

become vacant (from anywhere between 4 and 6 months) by reason of leave or absences of actual project/outreach workers

In 2009 the respondent body experienced a reduction in core funding and the manpower had to scrutinise the workforce with a view to making savings.

A new roster for relief workers was introduced which provided for three to four new set shifts. In addition it was decided to fill four outreach worker vacancies which had become vacant and which had not already been filled. The rationale behind all the changes was cost saving which the respondent was obliged to effect in the circumstances outlined.

There can be no doubt that the claimant had been operating in a project/outreach worker position at the point in time in March 2010 when the four positions were advertised in what is accepted to be an open and transparent way.

The respondent manager indicated there were up to 70 applications for the four roles and that an internal panel reduced the number to 22 to be interviewed.

Evidence was adduced to demonstrate a fairly rigorous interview process. Six of the candidates came from the then relief worker panel of which the claimant was one (as per her contract of employment dated 2007).

The claimant genuinely believed that as she had been working in outreach/project capacity in the proceeding six months without complaint or criticism that she would have a very good chance of acquiring one of the four jobs on offer. As it happened the claimants score sheet placed her in sixteenth position of all the candidates interviewed (which included internal and external candidates).

The claimant was understandably upset that she had failed to get the job and was not happy with the offer of 50 hours per month which she was being offered at a lesser rate of pay than had theretofore been received by her. In effect the claimant believed she had been “demoted”.

The Tribunal can find no reason to criticise the internal process and there can be no doubt that the claimant was led through her interview technique and it was explained to her that whilst she had been unsuccessful on this occasion she was now on a panel from which all future outreach/project workers would be selected. It was explained to the claimant that she would continue to have a future with the respondent.

Unfortunately the claimant could not see her future with this employer and left her employment.

The Tribunal has every sympathy for the claimant who acted honestly but cannot find that her actions were reasonable such as would allow her succeed in the claim for constructive dismissal under the Unfair Dismissals Acts 1977 to 2007.

Accordingly, claims the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 do not arise.

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)

