

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE- *claimant*

RP896/2010
UD650/2010
MN603/2010
WT276/2010

Against

EMPLOYER - *respondent*
under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney BL
Members: Mr. W. O'Carroll
Ms H. Henry

heard this claim at Galway on 10th February 2012

Representation:

Claimant(s) : In Person

Respondent(s) : Mr. Con Crowley BL instructed by Mr. Martin J. Kearns, Martin J. Kearns & Co., Solicitors, 1Devon Place, The Crescent, Galway

The claim under the Redundancy Payments Acts 1967 to 2007 was withdrawn at the commencement of the hearing.

Summary of Claimant's position

The claimant gave evidence that she commenced working for the respondent legal practice under a FAS traineeship. After the completion of a 10 week traineeship she commenced employment as a legal secretary in December 2007. The respondent is a single solicitor practice employing two employees including the claimant. The claimant told the Tribunal that she experienced difficulties in communicating phone messages from clients to her employer. She brought these messages to his attention verbally and by leaving messages on his desk. However the clients' calls were not being returned by the employer and clients subsequently telephoned on four or five occasions. This caused her great stress. She was also subjected to bullying

behaviour from her other work colleague who was employed as a legal executive. She found it very difficult to work with this person as she constantly criticised her (the witness's) work. She found her behaviour very intimidating and gave examples of this intimidating behaviour to the Tribunal. She became afraid to do anything because of the constant criticism to which she was being subjected. She did not feel that she ever had the opportunity to bring the issues to the attention of her employer as he was always busy and dealing with deadlines. He was always preoccupied with his work. Eventually she decided that she could no longer continue to work in that environment and she had no alternative but to leave her employment. She left work one Tuesday afternoon at approximately 3.30pm without speaking to her employer. She returned the following day and spoke with her employer. She was very upset and her employer was genuinely concerned for her but she could not recall if he asked her if there was anything he could do to help her remain in employment.

In cross-examination she accepted that she had no experience of working in the legal profession prior to her employment with the respondent. She had never worked in an office situation before. She accepted that she never told her employer of the difficulties that she experienced in the workplace prior to leaving her employment. She did not do so because the office situation was always frenetic and there was only time for dealing with emergencies. She only became aware of her rights after leaving her employment. She accepted that her employer had accommodated her in allowing her paid time off work to sit exams while she worked for him. She told the Tribunal that she was not provided with a contract of employment or a copy of grievance procedures and that she had not received payment for the 2009 August Bank Holiday.

Summary of Respondent's position

Counsel for the respondent submitted that the claimant had not demonstrated that a dismissal had occurred and the respondent had no case to answer.

Determination

After careful consideration of all the evidence tendered in this matter the Tribunal unanimously determine that the claimant in this case has not discharged the burden of proof, and tendered appropriate evidence to satisfy section 1 (b) of the Act, that she was left with no option to resign from her position with the respondent firm, justifying a claim for constructive dismissal.

Consequently the claims under the Unfair Dismissals Acts 1977 to 2007 and the Minimum Notice and Terms of Employment Acts 1973 to 2005 fail.

The Tribunal find no evidence was tendered in relation to the Organisation of Working Time Act 1997 claim, therefore such claim fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

