

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE *-claimant*

CASE NO.
UD2061/2010

against
EMPLOYER *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Hennessy
Mr F. Dorgan

heard this claim at Waterford on 24th May 2012

Representation:

Claimant: Mr Kephass Power B.L. instructed by,
Purcell Cullen Kennedy, Solicitors, Ash House, Cove Roundabout,
Dunmore Road, Waterford

Respondent: In Person

The claim under the Unfair Dismissals Acts, 1977 to 2007 was one of constructive dismissal accordingly it fell to the claimant to make her case.

Claimant's Case

The claimant worked as a locum household attendant in the X-Ray department of a hospital. She was very happy in her employment until February 2009. The respondent made the decision to cut staff levels in her department resulting in the claimant being sent to numerous other departments to work on a Friday; she carried a beeper so any department could request her services. The claimant dreaded Fridays and it was also 'hanging over her' during her working day on Thursday. This situation continued for a year. The claimant's contract states that, '*You may be required to work in any service area within the vicinity as the need arises.*' The claimant would not mind working in a different department; it was the uncertainty of where she would be working every Friday.

On the 26th of November 2009 the claimant wrote to the respondent raising her grievance, '*As you are aware I have had a grievance in relation to the above (Friday working/rotation) for some time and to date the matter remains unresolved. I am now formally submitting my grievance and claiming I am being treated less fairly by the (respondent.)*'

The grievance procedure states that for Stage 1 a complaint should be made to a manager who

will arrange a meeting no later than 7 days from receipt of the complaint, and a decision will be issued in writing within seven days. Stage 2 indicates that if agreement cannot be reached a stage 1 the complaint should then be referred to Senior Management and a decision will be issued in writing within seven days. Stage 3 sees the matter referred to the HR Department and Stage 4 referred the complaint to a third party. The claimant's complaint went to Stage 2 but no meeting took place as specified in the procedure; the manager reviewed the file and issued a decision. For Stage 3 the respondent's General Manager wrote directly to the claimant upholding the previous decisions at stage 1 and 2. The complaint was referred to the General Manager instead of to the HR department as they had been involved in the process from stage 1 and were therefore could not be considered impartial.

The claimant was very upset throughout the process and the situation was having an adverse effect on her health. The claimant resigned on the 10th of March 2010.

Determination

Having considered the evidence adduced at the hearing the Tribunal finds that the respondent for good reasons changed the location within the hospital where the claimant worked for one day per week out of the three days per week that the claimant worked. The Tribunal accepts that the claimant was genuinely unhappy and upset about this change. However, the claimant's contract terms enabled the respondent to make this change and thus this does not of itself constitute conduct by the respondent such as would entitle the claimant to consider herself constructively dismissed.

The Tribunal accepts the claimant's evidence regarding her feelings about the uncertainty surrounding the one day change but the Tribunal finds on the evidence that the impugned conduct of the respondent was not sufficiently grave such as would render it reasonable for the claimant to leave her job there and then. The Tribunal is persuaded by the fact that the claimant did not resign from her job there and then but resigned one year later albeit that she had complained about the change and how she felt about it almost from the start.

The Tribunal also accepts that the claimant found the manner in which the respondent carried out the grievance procedure unacceptable to her firstly because it deviated from the procedure set down in the respondent's grievance procedure policy document and secondly because there was delay. The Tribunal accepts the reasons put forward by the respondent regarding the deviation and delay but in any event the Tribunal does not find that these actions by the respondent were such as rendered it reasonable for the claimant to resign.

By a majority decision the Tribunal finds that the respondent did not engage in improper conduct or any conduct such as such as would entitle the claimant to consider herself constructively dismissed. Accordingly, the claim under Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)