

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO.

EMPLOYEE - **Claimant**

UD2148/2010

against

EMPLOYER - **Respondent**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms E. Kearney BL

Members: Mr B. O'Carroll  
Ms H. Henry

heard this claim at Ennis on 12 July  
and 17 September 2012

**Representation:**

Claimant:

Ms Marguerite Phillips, 12 Parnell Grove,  
Gort Road, Ennis, Co. Clare

Respondent:

Mr Daragh Hassett, Hassett Considine Solicitors,  
9 Carmody Street, Business Park,  
Carmody Street, Ennis, Co. Clare

The determination of the Tribunal was as follows:

This being a claim of constructive dismissal it fell to the claimant to make her case

The claimant was employed on a full-time fixed-term contract from 2 April 2009 until 11 October 2009 as a receptionist and sales executive. She was to report to both the front office manager (FM) and the sales and marketing manager (SM). According to the claimant's job description at that time the general description of her role was "Reporting to FM and SM you will provide a friendly and efficient service and ensure that guest needs are met throughout their stay. You will ensure that effective controls are implemented and adhered to regarding bills, reservations and accounts and you will contribute positively to the smooth and efficient running of reception and sales

office.” The claimant proved to be good at the work and from 15 June 2009 she was awarded a pay-rise and a contract of indefinite duration. While her new contract still gave her job title as a receptionist and sales executive her new job description described her as a reservation agent. The general description of her new role was “Reporting to FM, SM and the general manager (GM) you will provide a friendly and efficient service and ensure that guest needs are met throughout their stay. You will ensure that effective controls are implemented and adhered to regarding bills, reservations and accounts and you will contribute positively to the smooth and efficient running of this department. You will ensure the highest standards are maintained and that a can do attitude and upselling is at the forefront of each day’s activity.”

Among the claimant’s key responsibilities were

- Operate the current hotel reservation system
- Work flexible hours on a shift basis including night shift, in accordance with the departmental rota. This is a seven day position and will require you to work weekends as per rota
- Cover breaks for front desk staff daily
- You will be required to cover reception shifts as the need arises. This need is unavoidable and will be a continuous part of the job. In particular the cover of reception shifts will be holiday cover and will more often fall in the low season. When these occasions do arise, you are expected to ensure that your department is maintained according to the agreed standards set out by FM & GM

On 2 November 2009 the claimant sent an email to the human resource manager (HR) expressing concern about the roster and suggesting that, because of the shifts she was having to work on reception, she would only be two days in reservations. HR replied that as it was a quiet time the claimant would have to get through it the best she could.

Due to a downturn in business the respondent was forced to cut costs and on 20 November 2009, at a time when the claimant was on annual leave, GM issued a memorandum in which the respondent’s staff were advised of the need for all salary staff to take one week’s unpaid leave between 23 November and 27 December 2009. From Monday 4 January 2010 until 12 February 2010 the respondent’s hotel was to close from Sunday to Thursday and all staff were put on a three-day week.

On 17 December 2009, following complaints from the claimant about the effects of the afore-mentioned memorandum in which she called into question her future with the respondent, the claimant sent an email to HR with copies to FM and GM in which she set out the difficulties which the decisions would have for her personal situation. The claimant talked of being backed into a corner adding “if and when I decide to leave the respondent I will let you know as soon as I have made my decision”. HR replied to the claimant later that day reassuring the claimant that they did not want her to leave.

There was a dispute between the parties as to whether, shortly before Christmas 2009, FM had agreed to the claimant being rostered on Mondays to Wednesday during the three-day week period.

In the event the respondent acceded to this as the claimant had arranged alternative employment despite being offered extra hours in the bar and restaurant to make up for being put on a three-day week.

The claimant met GM and HR on 4 January 2010 to discuss issues with them and then walked out of the meeting. In an email later that day to GM the claimant apologised for walking off, explaining that she was frustrated with what was happening at work. She claimed there were rumours that certain people wanted her “out”. The claimant raised issues about her treatment by both HR and FM. GM replied the same day that he was unaware of any agenda against the claimant and that there were no issues with her work.

On 22 March 2010 the claimant sent an email to GM complaining about the way in which she was being taken from reservations to the front desk. Included in the email was the line “I can’t run the reservations department the way I want to – which is properly & efficiently if people won’t let me do my own job & roster me elsewhere” and then “reservations is a full-time job & needs to be treated as one. I take pride in my work & won’t be blamed for not being allowed to do my job properly”

Around this time the claimant was seeking an increase in remuneration and on 25 March 2010 GM emailed the claimant in the following terms “Further to our conversation last week regarding you receiving commission for upgrades, I have thought it through and I still feel that selling rooms and selling the different room types is part and parcel of the reservations role. I have always felt this is the way it should be. There will be no change to the current system”

After this email GM then sent another email to the claimant in response to her email of 22 March. In this email GM drew the claimant’s attention to her job description. He suggested that the claimant was coming across as moaning about her job. GM concluded by stating that he did not want to receive any more emails complaining about the amount of work she had to do.

From the following day the claimant was out sick. GM met the claimant and discussed a possible revision of her job description. When this was offered to the claimant she rejected it and on 17 April 2010 sent GM an email in which she sought termination of her employment by reason of redundancy or dismissal. On 19 April 2010 GM emailed the claimant and made it clear the respondent would not be terminating her employment as her position had not been made redundant. On 21 April 2010 the claimant submitted her resignation in an email to GM.

### **Determination:**

The claimant asserted that she had been bullied by FM yet adduced no evidence to support that assertion. She further asserted that she had been required to work an hour a day extra for nothing from shortly after joining the respondent. Having seen the time-sheets tendered by the respondent the Tribunal is satisfied that this was not the case; rather the claimant was on a 78

hour fortnight. The job description for the position occupied by the claimant makes it perfectly clear that the claimant would have to spend time working on reception duties. It was the prerogative of management to decide on the prioritising of work between reception and reservations. It is very clear that the respondent was more than satisfied with the claimant's performance in the reservations area. The Tribunal is satisfied that at no time did the respondent treat the claimant other than in accord with her contract of employment. Accordingly, the Tribunal is satisfied that the claimant has not shown grounds such as to justify a claim of constructive dismissal. It follows that the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)