

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

CASE NO.
UD1269/2010
WT840/2010

claimant

Against
EMPLOYER

respondent

under

ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr D. Moore
Mr. J. Dorney

heard this claim at Dublin on 28th May 2012
and 16th July 2012

Representation:

Claimant:

Respondent:

The determination of the Tribunal was as follows:-

The claim under the Organisation of Working Time Act, 1997 was withdrawn during the hearing.

Claimant's Case

The claimant told the Tribunal that in January 2009 she commenced employment for the respondent. The respondent is a paediatric consultant doctor. The claimant worked as a receptionist making appointments for patients and doing general office work. When she started there was a backlog of work. The receptionist before her left her position to have a baby.

The respondent closed his clinic in the public hospital and she moved to a private hospital with him. Her employment was uneventful until February 2010. The respondent's wife told her that her performance was not satisfactory. The mother of a patient had complained that she couldnot contact the claimant to arrange an appointment for her sick child. The claimant was informed that the previous receptionist would be asked to work 2 days a week to deal with thework. The claimant received a letter from the respondent's wife on 8th February 2010. The claimant was shocked but replied by drafting a business proposal and emailing it to the respondent's wife. The claimant did not receive a reply.

She requested that the respondent meet her on the 10th February 2010 before he left the clinic. She told him that she was wondering what was going on and she handed him an e mail to read.

The respondent told her he was sorry that it was not working out and that he would have to let her go. The claimant was very upset. She could not understand why he said this. She had worked hard. He told her she would be better suited to a more supportive environment. There had been no indication that her work was unsatisfactory. The respondent was going to India to work in October and the claimant had expected to go but she did not go to India. She finished work on the 11th February 2010 after the clinic. She thought that maybe the respondent had a bad day. She did not think that she would be let go.

The respondent was very professional. The claimant was paid two months' salary. He passed a resignation letter to her to sign. He gave her €5,000 and she thanked him for his understanding.

She told him she would not sign the letter. He told her to sign for the cheque, she needed the money and she typed up the receipt. She knew something was wrong and she was being pushed from her position. She did not get a reference and she wrote to him to ask for one.

After her dismissal she was in shock but she sent a bunch of flowers to the respondent's wife. At no stage did the claimant tell the previous receptionist that she was unhappy at her job and that she was intending to leave.

On Monday 12th February 2010 she undertook cover as a receptionist at another hospital. She received a call from the office manager at the other hospital and told her that cover was not working out. On the 10th November 2010 she had a six week temporary contract with a retail store. She is unemployed and has two children. She applied for jobseekers benefit.

Respondent's Case

The office manager gave evidence and told the Tribunal she worked for the respondent when the claimant was employed. She is not working with the respondent now. On the 9th February 2010 the claimant telephoned her and told her she was leaving. The office manager told the claimant that there was work for her on a week to week basis and she would gain experience in the clinic. The claimant asked her if this was permanent work. The office manager spent a day training her in. The next day she received a text from the claimant that she was exhausted. She telephoned the claimant and the claimant told her that she was not going to work as she had a lump sum of money to live on. This was a very amicable conversation. The claimant told her she was looking for a raise and if she was not going to get an increase in her pay she was going to leave. The claimant felt she was doing a lot of work.

In cross examination she stated that her recollection was very clear. On the 9th February 2010 she was desperate for staff and she needed someone with experience. She thought that the claimant was going to remain in work and she was shocked and surprised. She was in regular contact with the claimant. Prior to Christmas the claimant requested another pay increase. The claimant was paid for two days but she had no involvement in employees pay. She did not recollect the claimant being in work for two days.

The previous receptionist told the Tribunal that she was a medical secretary and she worked for the respondent three and a half days a week. In February she worked as a medical secretary for the respondent four and a half days a week. In February 2009 she was on maternity leave and she did not intend to return to work. On the 3rd February 2010, the respondent contacted her to return to work to help out on a temporary basis for two days a week Mondays/Tuesdays. She trained the claimant in prior to commencing her maternity leave.

On Monday 8th February 2010 she was in work and she told the claimant that she was there to help out. The claimant told her everything was in order. The witness felt she was not wanted. On the following day Tuesday the claimant told her about a meeting she had with the respondent's wife. A patient was not happy with the service she had received. The claimant told her that the job was not worth the hassle and that she was going to give in her notice. The witness was shocked and she had no intention of returning to work full time. The place was quite chaotic. The respondent told her he had no one to cover clinics. In cross examination she stated that she did not intend return to work. She had worked four and a half days a week. She was aware that there were a number of complaints.

The respondent gave evidence. He told the Tribunal he was a paediatric consultant/urologist and a visiting professor. In February 2009 he worked in a public hospital, where he had private and public patients. He met the claimant before her employment began and she was assigned to work in his practice for a half day a week on a Thursday. The claimant's duties included typing letters, answering telephones and making appointments for patients. In public hospital there was a manager in the private clinic who could help. The claimant was aware that he was moving to another clinic. He retired from public work and was undertaking private work in July 2009.

In January 2010 a problem arose and the claimant telephoned his wife who managed the practice. The claimant was upset as the mother of a child complained that the claimant was rude and abrupt to her on the telephone. As a result of this his wife had a detailed meeting with the claimant and suggested a number of changes. Working with children requires patience, compassion, kindness and sensitivity. He had been working in in this area for forty years and this was the first time that this situation arose. His wife met the claimant and explained how important it was to be kind to parents as they were very anxious when their child was sick.

After this he thought that matters would be resolved. He received an e mail from the claimant on the 4th February 2010 with an attachment. Attached to the e mail was an overview of the claimant's daily responsibilities. The claimant requested an extra staff member two days per week and an office cleaner as well. All his previous secretaries did a lot more work during their half day at the clinic. He was prepared to get extra help to resolve the backlog of work. Letters dictated to GP's were not sent out on time and telephone calls were not being answered. He was prepared to get help two days a week.

He suggested that the previous receptionist be brought in as he wanted to get through the backlog. He received an e mail from the claimant on the 8th February 2010. He met the claimant on the 8th February and she asked him if he had time to think about the e mail he sent. He told her he had and he brought to her attention a more serious matter which occurred on the 4th February 2010 in which the claimant had documented a wrong procedure for a patient, this was noticed by a third party otherwise it could have been a disaster.

He and his wife advised certain suggestions and offered to take on an employee for two days a week. He was very surprised regarding the urgency of the e mail from the claimant on the 4th February 2010. Suggestions had been made to the claimant on the 3rd February 2010 regarding dealing with patients and parents. The respondent was very supportive about the claimant. He had spoken to the claimant prior to that and he brought to her attention an error in the operation list. He sent a letter to the claimant on the 8th February 2010 in which he outlined that he wanted to make changes. Telephone calls had to be answered; patients had to be shown sensitivity and compassion. He was 40 years in this area and it had to focus on care for children.

He also brought to her attention to follow through with dictated letters.

Before going to the operating theatre on the 10th February 2010 he spoke to the claimant. The claimant mentioned that she needed help for two days a week and a cleaner. He told her that was not acceptable to him. She mentioned an increase in salary he told her he had increased her salary in July before moving to the private hospital.

She told him if her proposal was not acceptable to him that Thursday would be her last day in the practice. He was shocked and he told her to think about it. Before starting the clinic the claimant told him that would be her last day in work. He thought this was a very impulsive decision. The claimant told her her partner had lost his job. He gave her €5,000.00 as a gesture of goodwill. He did not know that she had two young children. He needed a receipt for the €5,000.00 and he did not see the receipt until he went home. He felt she was making a very rash decision. He gave her a hug when leaving and wished her the best for the future.

On Friday 12th February he was in the office in Crumlin at 7.30. He received a call from the office manager saying that she had received a text from the claimant and she would be starting a job in Crumlin on Monday. The claimant went to the hospital he worked at on Saturday and gave him a bouquet of flowers for his wife. He was shocked when he received correspondence from the claimant's solicitors. He had given her money as a goodwill gesture and the claimant had sent flowers to his wife as a gesture of thanks for being kind.

In cross examination he stated that a parent had complained about the claimant. The office manager of the NCH received the brunt of the calls if the telephones were not answered. The secretary there contacted some secretaries for feedback which was negative. He had a full time employee to look after a half day clinic. This involved appointments, booking patients for surgery and telephone calls. The claimant made an error in that the incorrect operation was scheduled for a patient. This occurred a year into the claimant's employment.

The respondent and his wife compiled a detailed list for the claimant. The claimant had a number of good qualities, but the claimant had a number of things to learn. In his practice the welfare of children was the most important thing. He felt that the claimant had made a rash decision and walked away from her job. It was very stressful for the claimant when the parent of a child made a complaint about her on the 28th January 2010.

If the terms that the claimant wanted were not agreed she was going to leave. He received a request for a reference from one facility. Most employers would request a reference. He always sent a reference to an employer.

The respondent's wife told the Tribunal she was a GP and managed her husband's practice. In February 2009 the respondent had a private secretary in Tallaght and a personal assistant in the research centre. Private work was undertaken by private secretaries. In February 2009 the claimant commenced employment with the respondent. Prior to 28th January she was not aware of specific problems. On the 28th January 2010 the claimant was upset as the mother of a patient had threatened her with a solicitor's letter. She asked her husband if he was aware of anything going on. She had a discussion with the claimant.

She had a meeting with the claimant on the 3rd February 2010. The main issue was the mother of the patient who had made a complaint. Letters dictated on the 23rd December 2010 were not ready for signing. These should be typed within three days and posted straight away. She

explained to the claimant the importance of doing this. Parents of patients could not get through to the claimant on the telephone. If patients were not given an appointment it affected the childrens' welfare. She outlined to the claimant the importance of these issues.

The secretary is the first port of call and the public face of the practice and the values in looking after the patient should be reflected in the secretary. The telephone situation was so desperate that clients could not get through. If the claimant had so much work to do she felt it best for the safety of the patients to obtain temporary help. The previous receptionist with the respondent came on board. The respondent did not have to train a new person again. The claimant was very happy with this arrangement.

On a number of occasions she felt it was better if the claimant had another telephone. The claimant was informed it was important to show kindness and compassion to patients. It was important to be available from 9am until 5p.m.

She spoke to her husband after she received an e mail from the claimant on the 8th February 2010 at 4.54p.m. She was surprised to receive this e mail in which the claimant outlined the overview of her daily responsibilities as she had already discussed the problems with the claimant.

She saw the e mail of 8th February 2010 which the respondent sent to the claimant. This e-mail was in response to the claimant's e mail regarding overview of daily responsibilities. It was outlined in this e mail that the current suggestions would not work for the practice. The current workload was no different to what previous secretaries had to handle. It outlined if the claimant was not willing to improve on the issues her position would have to be reviewed.

Determination

The Tribunal carefully considered the evidence adduced. There was a conflict of evidence concerning how the claimant's employment came to an end. The Tribunal prefers the evidence of the respondent. He was concerned about the claimant's performance and when his wife raised the issues with her the claimant responded by making demands that he considered inappropriate. The Tribunal is satisfied that an alternative position was available to the claimant and that she ceased working there after a very short time. The Tribunal finds that the claimant's employment did not terminate as a result of unfair dismissal. The claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)