

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD849/2011
MN963/2011

against
EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Dr. A. Courell B.L.

Members: Mr D. Morrison
Ms R. Kerrigan

heard this claim at Letterkenny on 6th September 2012 and 27th November 2012

Representation:

Claimant: Callan Tansey, Solicitors, Law Chambers, 3 Wine Street, Sligo

Respondent: O'Donnell & Sweeney, Solicitors, Dungloe, Co. Donegal

The determination of the Tribunal was as follows:-

Respondent's case

JS, a partner in the respondents firm gave evidence that she and the claimant are related. The claimant was employed as a secretary and after a period of training she was given a full time position with contracted hours, from 9.30am to 5.30pm five days per week in the respondent firm. In January 2010 the claimant approached JS to say that her mother was ill, her sister was returning to work and she wanted to do part-time hours. There was already one part time person in the office so while JS told her she would "see how it would go" it became obvious after a period of time that one full time person was required in the office. MF the other partner in the firm said it wasn't working out and that he would speak to the claimant about it. The other person was a book-keeper and didn't have secretarial skills. JS only became aware that the claimant was spoken to by the other partner following a discussion the claimant had with JS's parents in a pub where she worked in September 2010.

The other partner is MF. The claimant told her parents (JS's) that she had been given her notice by MF because she could not work full time and spoke about him in a very derogatory manner. She

also told them that she “hated the job anyway”. JS found out about the situation after speaking to her father. She called the claimant on Monday morning, they discussed what had occurred. She advised the claimant that she knew MF was going to speak to her but she didn’t know when it was going to happen. It was MF who needed the full time secretary. She also stated that the claimant was on sick leave for a period of time afterwards which added to the problems. JS began making enquires for a full time secretary. She drafted the letter advising the claimant of her cessation of employment on 22nd October 2010.

Under cross-examination JS stated that the claimant clearly understood the situation. The claimant was given notice and had stated to her in the telephone conversation that MF had asked her to return to full time employment but that she couldn’t do it. JS was unsure what date the decision to cease the claimant’s employment was taken. The claimant was working in her pub while on sick leave telling people she was sacked, that’s when JS found out she was dissatisfied.

RS mother of JS gave evidence that when she and her husband went into the claimant’s bar she approached them and proceeded to say “did you hear I’m losing my job”. She told them she had her mother and children to look after and couldn’t work full time. She also used very foul language when speaking about MF, and she made it very clear she was not going back.

DS father of JS gave evidence of the conversation he and his wife had with the claimant in the pub. He stated that the claimant told him she was losing her job because a fulltime secretary was needed. He asked her when it was happening and she told him “as soon as they get a replacement”, she also said her mother could no longer look after her children but she wasn’t terribly worried because she hated the job anyway. She then proceeded to call MF derogatory names.

MF gave evidence of calling the claimant into his office on 8th September. The claimant was on a three-day week and he had asked her several times to reconsider going back full time. On that day he asked her again to reconsider, and she declined. He remembered the conversation, he was seated, she was standing and he took a memo of it. MF told her in those circumstances he would have to let her go. He also told her that he wasn’t pushing her out the door and she could carry on until they found a replacement. The claimant told him she understood the position and never reverted to him about anything.

Asked how many times he had approached her about returning he suggested maybe six or seven. If the claimant had mentioned a need to consider the position he would have noted it. He knew the letter issued to the claimant was being drafted but his input to it was nil. She then came into the office, without appointment, looking for a copy of her contract which was furnished at a later date.

Claimant’s case:

The claimant gave evidence that she looked to job-share with another person in the office in 2010. The request was refused and the other person was made redundant. She went to 2.5 days per week in February and was asked to increase it to 3 days in May. She stated that she was never asked to return to a 5 day week until a conversation at her desk with MF in September. She told him she would have to look into alternatives regarding her child care. The conversation lasted approximately 10 minutes and there was nothing further discussed. She handed in a sick certificate in October and MF said “go and do what you have to do”. She did have a conversation with JS’s parents and said “if I can’t go back full time I’ll lose my job” but didn’t recall anything about saying she hated her job or calling MF names.

When the claimant telephoned to say she would not be in again the following week and had a

further sick cert she received the letter ceasing her employment.

Under cross examination the claimant said that, she did say she couldn't work full time, she did say her sister was starting a new job but she didn't say that she was losing her job. She also denied making comments about MF.

Determination:

The Tribunal accepts the evidence of the respondent and considers that the respondent acted in good faith at all times. However, there was a breakdown in communication between the claimant and the respondent in relation to the respondent's requirement that the claimant commence a five day week. The claimant began working initially on a five day week and then at the claimant's request to a 2.5 day week and thereafter this increased to a three day week. The respondent had agreed to alter the claimant's contract of employment by allowing her to take up a reduced working week.

The burden was at all times on the respondent to establish that the claimant's dismissal was fair. The Tribunal finds that on the balance of probabilities, the respondent has failed to prove that the claimant's dismissal was in fact fair. In particular, the Tribunal queries the procedural fairness of the dismissal. In the circumstances, the Tribunal unanimously finds in favour of the claimant. On the basis of the evidence adduced the Tribunal does not find that the claimant suffered any financial loss and awards the sum of €614.82 in respect of compensation.

From the evidence adduced under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, the Tribunal prefer the evidence of the respondent and so unanimously find that this claim fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)