

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE - Claimant

Against

EMPLOYER - Respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms F. Crawford B.L.

Members: Mr F. Moloney
Ms. N. Greene

heard this claim at Naas on 4th January 2013.

Representation:

Claimant: Mr Gerard F Burns, Burns Nowlan, Solicitors, 31 Main
Street, Newbridge, Co Kildare

Respondent: Ms Donna Reilly BL, instructed by Mr Aidan McGrath, DAS Group, Europa
House, Harcourt Centre, Harcourt Street, Dublin 2

The determination of the Tribunal was as follows:-

Claimant's Case:

The respondent is a crèche/montessorri school located in Co. Kildare. It also has an afterschool facility. The business has been operating for fifteen years. The claimant commenced employment on 1st May 2010 and was employed as a Montessori teacher. She had 5/6 years experience in this area of work. She was not furnished with a contract of employment. While OC was her manager, IC looked after the finances and staffing of the business. IC had a part time role in the business and came in on regular basis. Both OC and IC dealt with work complaints.

On 27th May 2011 the claimant's colleague, JC was teaching her class shapes using masking tape. During break time that day the claimant brought the children she managed downstairs to the classroom that JC occupied. JC had handed out masking tape to the children to feel the

texture of the tape. The children enjoyed this.

That evening the claimant received a telephone call from JC who had been contacted by OC. OC had received a telephone call from an irate parent of one of the children with concerns. JS subsequently telephoned and clarified matters for the parent and everything seemed to be ok.

The following Monday, 30th May 2011 OC asked the claimant to write down her version of events of 27th May 2011. She subsequently did this.

On 1st June 2011 IC spoke to the claimant who told her that serious allegations had been made. Masking tape had been placed on a child's mouth. The claimant had no recollection of such an occurrence in JS's class and IC wanted to know exactly what had occurred on 27th May 2011. The claimant re-iterated her version of events. IC said 'you better not be lying and that she would never work in child care again'. The claimant was removed from her classroom and placed on a different rota.

On 8th June 2011 OC asked the claimant to write up a more detailed statement of what had occurred on 27th May 2011. Both OC and IC asked the claimant to meet with them that day. In advance of the meeting on 8th June 2011 the claimant was not advised if she could bring a colleague along with her to that meeting. The claimant was told that JS had made a second statement but the claimant was not furnished with a copy of that statement. The respondent contended that JS had owned up and said that she had placed masking tape on a child's mouth. OC and IC contended that the claimant was not telling the truth. The claimant was constantly accused of being a liar. The claimant had six children in her care that day and had her back to JS in the classroom. A heated argument ensued and the claimant said she was going to seek legal advice. She felt the respondent was punishing her for the actions of her colleague. She felt intimidated. At one stage she walked towards a door but the door was closed by IC who told her she was not to leave. IC told her she would never work in childcare again. The claimant felt threatened. She then asked if she could go home but was told to finish her shift. She was accused of covering up for her colleague. The respondent told her they had lost trust in her and OC said she could not stand the sight of her.

The claimant was unaware if any grievance procedure being in place in the school.

The claimant contended that she was left with no option but to leave her employment. She did not return to work after 8th June 2011. She contacted her solicitor. While OC and IC tried to contact her she refused to engage with them. A detailed letter was sent from the claimants' Solicitor dated the 9th June 2011 which was never replied to.

She secured temporary relief work in the months October, November and December 2011 and secured full time work in January 2012.

Respondent's Case:

OC is the owner the crèche/Montessori school. IC looks after financing and staffing and has a part time role in the business. Staff meetings take place on a regular basis. OC furnished the claimant with her contract of employment. The claimant never returned a signed copy of this contract. If staff have grievances these are dealt with by their supervisors.

On the evening 27th May 2011 OC received a telephone call from a concerned parent of a child

who attended the school against a co-worker, (JS) of the claimant. It was alleged a teacher had placed masking tape on a child's mouth. OC said she would look into it. She rang JS to discuss the matter with her. JS was a trusted employee. IC asked JS to telephone the concerned parent. Everything seemed fine.

OC was a bit concerned when the child did not come to school on Monday, 30th May 2011. She telephoned the child's father. He was very aggressive and said he was going to take things further. OC spoke to JS who denied anything had happened during her class the previous Friday. JS furnished a written statement of what had occurred on the Friday. OC heard that the claimant had been present in JS's classroom that day. OC then asked the claimant to write a statement. Both JS's and the claimant's statements were very alike. OC spoke to three children who told her that JS had placed masking tape over their mouths.

OC felt sick and had lost trust in her staff. She asked the claimant to make a second statement. JS also furnished a second statement. The claimant said she had been at one end of the classroom with her back to JS.

Both OC and IC met with the claimant on 8th June 2011. A heated argument ensued. Both parties raised their voices but OC did not think it was aggressive meeting. The contents of JS's second statement were put to the claimant. The contents of JS's second statement had changed.

Straight away the claimant said she was going to speak to her solicitor. Both JS and the claimant worked in separate classrooms. OC wanted an explanation as to why they were both together in JS's classroom on 27th May 2011. The claimant refused to furnish a reason as to why she was present there. OC said 'don't lie to me'. At the conclusion of the meeting the claimant and both OC and IC had an amicable chat in the yard. IC communicated to the claimant that he believed her version of events. The claimant asked if she were to go home. As there was approximately forty minutes left on her shift she was asked to remain at work. The claimant did not return to work the following day and OC and IC tried to make contact with her but to no avail. The respondent received a letter from the claimant's solicitor the following Monday. They in turn handed this letter to their legal advisor.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. Clearly there was a conflict of evidence between the parties.

On 27th May 2011 a complaint was made by a parent of a child against a co-worker of the claimant. It was alleged masking tape had been placed on this child's mouth. This employee furnished a statement of what had occurred. The claimant in turn was asked to furnish her statement of events that day. The co-worker and the claimant were again asked to furnish more detailed statements. The co-worker changed her second statement and admitted placing the tape over the child's mouth. A meeting took place on 8th June 2011. The claimant was not advised if she could have a representative present with her that day. She was not furnished with a copy of her co-worker's second statement in which she admitted the offence. While the claimant had been in her co-worker's classroom that day she had not seen what had happened. The respondent was unhappy with the claimant's version of events and foremost that the claimant was present in the classroom with her co-worker when she should not have been. The respondent wanted an explanation for this. The claimant

immediately said she was seeking legal advice and felt that she had no alternative but to leave her employment. She contended that she was being punished for her colleague's actions that day. She felt threatened and intimidated and felt she had no alternative but to leave her employment.

As well as the claimant not being advised that she was entitled to have representation at the meeting of the 8th June (or given an opportunity to attain legal representation when this was canvassed), the Tribunal also concludes that at the meeting of the 8th June, the claimant was not clear as to what was the matter being investigated as by the evidence of the Respondents the issue being investigated varied from what had possibly occurred to the child to why the claimant was in the classroom with JS.

The Tribunal is satisfied that the claimant had not been furnished with a contract of employment. The respondent could not in fact furnish the Tribunal with a signed copy of this contract. The unsigned contract of employment furnished to the Tribunal made no reference to grievance procedures. Grievance procedures were outlined in a Job Description Form which the claimant had not received. The Tribunal is not satisfied that the claimant was advised that there were procedures for bringing a grievance.

The Tribunal has examined the evidence of the parties and the conduct of both the claimant and the respondent together with all the circumstances surrounding the termination. Considering that there was such a conflict of evidence, if there had of been an independent person attending the meeting of the 8th June, it would have assisted the Tribunal. Further, the Solicitors letter sent on behalf of the claimant of the 9th June 2011 was never replied to despite the contents of the letter setting out all complaints and allegations in a most complete way.

The Tribunal finds that the claimant was constructively dismissed from her employment and awards her €10,500.00 under the Unfair Dismissals Acts, 1977 to 2007.

As no evidence was adduced in relation to holiday pay the claim under the Organisation of Working Time Act 1997 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)