

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1123/2011, RP1471/2011
MN1213/2011WT460/2011

Against

EMPLOYER

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. O'Connor

Members: Mr G. Andrews
Mr D. McEvoy

heard this claim at Tralee on 16th January 2013

Representation:

Claimant : Maurice O'Sullivan & Co, Solicitors, 9 Colbert Street, Listowel, Co Kerry

Respondent: Mr Michael Stack, Baily's Solicitors, Church Street, Tralee, Co Kerry

The determination of the Tribunal was as follows:

Respondent's Case

The respondent is a sole trader who owns and manages a retail sports outlet in a north Kerry town. The respondent took over this shop in 2002 and became the claimant's new employer. He never issued her with a contract of employment or a statement of her terms and conditions of employment. Up to August 2007 the claimant worked as a full time employee. She then became unavailable for work for around six weeks due to illness. On her return she sought and was granted a three day working week. At no time subsequent to that did she ask to be returned to a full time position.

According to the owner by January 2010 he could no longer afford to employ her for those three days and reduced her working week to two days. One year later he again reduced her working time to one day a week. Early the following month the claimant contacted the respondent and requested she be made redundant. Later that month he met her in the shop where she signed an RP50 form, took her redundancy payment and read and signed a document termed as a wavier agreement.

Those documents were prepared in advance and when presented to the claimant she did not object to them. However, she was upset at this development. The owner accepted that he did not give the claimant proper notice or payment in lieu of that notice.

Claimant's Case

The claimant commenced employment at this shop in 1995 and worked there as a shop assistant. She enjoyed a good working relationship with the owner and his sisters who also worked there on occasions. In 2007 the claimant's request to be placed on a three day week was granted. However, her request to be given extra hours the following year was not granted. On the contrary her working week was again reduced in 2009 by one day and again her offers to work more hours were not accepted. Her working hours were again shortened to only working on Saturdays from January 2011. Among her reaction to this was to acquire advice and information from a citizens' information office. She also offered to work more hours and told the Tribunal she would have been happy to do this on the minimum wage.

When she met the owner on 11 February she was shocked to be presented with a redundancy form and another document. While in shock at that unexpected development she signed all forms and accepted a payment for redundancy. The claimant stated that she neither sought redundancy and certainly did not want it.

Determination

Having heard and considered the adduced evidence the Tribunal is not satisfied that an unfair dismissal occurred in this case. A redundancy payment was discharged and accepted by the claimant and the Tribunal finds on balance that such a situation existed between the respondent and the claimant at the time.

Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 and the appeal under the Redundancy Payments Acts, 1967 to 2007 do not succeed.

The appeal under the Organisation of Working Time Act, 1997 falls for want of prosecution.

Since the Tribunal concludes that there was an element of duress placed upon the claimant in signing what was termed as a wavier agreement that this form has no validity in this case. The Tribunal also notes the respondent's acceptance of his non-compliance with statutory notice obligations. Therefore the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 is allowed and the appellant is awarded €1376.00 as compensation under those Acts, being the equivalent of eight weeks' wages.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)