

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD2065/2011

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. S. McNally

Members: Mr. D. Hegarty
Mr. J. Flavin

heard this claim in Cork on 25 February 2013

Representation:

Claimant(s):

Mr. Barry Sheehan, Barry Sheehan, Solicitor, 26 Marlboro Street, Cork

Respondent(s):

Mr. Patrick Mullins, Mullins Lynch Byrne, Solicitors,
Melbourne House, Model Farm Road, Cork

The determination of the Tribunal was as follows:-

An unfair dismissal claim was lodged on behalf of a hotel leisure centre receptionist (hereafter referred to as the claimant) in respect of an employment from May 2006 to September 2011. It was alleged that the hotel (hereafter referred to as the respondent) had breached the claimant's contract of employment by unilaterally reducing her hours of work below the contractual period of forty hours per week on a permanent basis whereupon the claimant resigned and was claiming a constructive dismissal.

The respondent's defence stated that it was denied on behalf of the respondent that the respondent had breached the claimant's contract of employment. The claimant's hours were reduced to a three-day week. This was also applied to two other employees working at reception at the respondent's leisure centre.

At the beginning of September 2011 the claimant accepted a rota of a three-week period of a three-day week for the first week, a three-day week for the second week and a five-day week

for the third week. However, the claimant then handed in a letter of resignation. It was submitted that there was no case against the respondent in that there was no evidence of any conduct by the respondent which could reasonably justify a constructive dismissal claim. Furthermore, it had already been found by a rights commissioner that there had been no unlawful deduction of wages following the placement of the claimant on a three-day week.

The Tribunal heard sworn testimony from the respondent's HR manager. The claimant did not give sworn evidence. It was not established that the respondent had breached the claimant's contract by putting her on a three-day week. The Tribunal was satisfied that this was done independently of the fact that the claimant had been pregnant and had been out for maternity-related reasons.

Neither was it established that the claimant had done enough to raise a grievance and discharge the substantial onus of proof required for a constructive dismissal claim. She was paid for the hours she worked and she had not been subject to an illegal deduction within the meaning of the payment of wages legislation.

It is the unanimous finding of the Tribunal that the claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)