

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE – *claimant*

CASE NO.
UD1750/2011

Against

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr G. Hanlon

Members: Ms A. Gaule
Ms N. Greene

heard this claim at Dublin on 29th January 2013

Representation:

Claimant(s):

Respondent(s):

The determination of the Tribunal was as follows:-

As dismissal was in dispute the claimant gave evidence first.

Claimant's Case:

The claimant gave evidence. She was employed as a logistics co-ordinator by the respondent company. She sourced accommodation and travel for foreign workers on contract work in France. Her hours were 7.30am-5.30pm, with a one hour lunch break, Monday to Friday. Her employment commenced on 1 September 2008.

She commenced maternity leave on 3 October 2010. She was due to return on 4 April 2011. She received a phone call from the Group HR Manager (HRM) while on maternity leave. The HRM wanted to know when she would return to work as her replacement, whom the claimant had trained in prior to going on leave, wanted to know if her contract was going to be extended. The claimant said she would have to enquire into childcare.

The claimant phoned the HRM and told her that she had two options in regard to crèches. One

was a five minute walk from work, but did not open until 7.45am. The other was close to her home and opened at 7.30am, but she had a 45 minute journey to work from there. She could not see how she could make it to work by 7.30am. She asked if the company could rearrange her hours or give her part-time hours. The HRM repeatedly told her that her contracted hours were 7.30am-5.30pm. The HRM suggested that she take the 16 weeks' unpaid maternity leave which was available to her. The claimant said that she could not return on those hours. The HRM asked her to put it in writing.

The claimant emailed the HRM on 3 March 2011 and stated that she would not be returning to work after her maternity leave as no arrangement was possible to reduce her hours. She did not intend to take the 16 weeks' unpaid maternity leave. She phoned the HRM and asked for her email to be acknowledged. The HRM said she would acknowledge the email but never did. She phoned the HRM at the end of her maternity leave to query if she was expected into work the following week. The HRM said that she was not expected. She did not receive any contact from the company after submitting her resignation.

She later discovered that her replacement worked from 8am-6pm. She cited other colleagues who had made arrangements to start or leave work early. If she had been offered 8am-6pm she could have returned to work. The HRM never suggested that she invoke the grievance procedure.

During cross examination she agreed that she had asked the HRM for a reduction in hours or part-time work. The HRM had told her to think about it and that she could take unpaid maternity leave. She was unaware of the company's grievance procedure. She agreed that she signed a form at the induction session, but she did not recall being informed of the grievance procedure. She did not raise other employees' arrangements with the HRM.

The claimant gave evidence of her loss.

A former employee of the company gave evidence. In February 2011 her line manager asked her if she would work 8am-6pm and 7.30am-5.30pm on alternate weeks to accommodate the claimant's replacement. It did not suit her so she refused. The claimant's replacement worked 8am-6pm. She stated that she did not receive a copy of the company's grievance procedure during her time with there.

During cross-examination she denied that she had invoked the grievance procedure while an employee. She had a difficulty with her manager which she raised. She had a meeting with a different manager but her problem was set aside and she decided to resign.

Respondent's Case:

The Group HR Manager (HRM) gave evidence. She rang the claimant towards the end of her maternity leave to find out if she was returning or taking unpaid leave. The claimant did not know if she was going to come back to work at all. The claimant said she would look into childcare and revert to her. The claimant phoned back and said that 7.30am-5.30pm was not suitable for her as she could not find a crèche that covered those hours. She asked for a

reduction in hours or to go part-time. She did not specify what hours.

The HRM did not think that part-time hours would be possible as the section the claimant worked in was very busy. She met with the claimant's line manager on the same day that the claimant rang to discuss the request. She and the line manager then spoke to the Operations Director. It was decided that the section was too busy to accommodate a reduction in hours.

She phoned the claimant and told her that she had discussed her request with her line manager and the Operations Director and unfortunately it was not possible to reduce her hours. The claimant said that she had no alternative but to leave. The HRM told her not to rush into anything and that she could take unpaid leave and see if anything else could be arranged, but if that was her decision she should put it in writing. She received the claimant's resignation by email on 3 March 2011. She agreed that she did not acknowledge the claimant's email. She believed that the claimant had made up her mind. She had requested outstanding holiday pay.

There was no further discussion regarding hours. She understood that the claimant was looking for a reduction in hours or to work part-time. The claimant did not ask if she could work from 8am-6pm. She understood that the crèche nearby closed at 6pm. The claimant's replacement worked the same number of hours as the claimant had. She did not recall the claimant phoning to ask if she was expected into work when her maternity leave ended. The grievance procedure and where to find it was covered at the induction course.

She believed that the colleague who gave evidence was aware of the grievance procedure as she had given her a copy of it. The colleague had informal conversations regarding her problem and did not invoke the full procedure.

During cross-examination the HRM agreed that there was no written correspondence with the claimant. She did not suggest the grievance procedure to the claimant. The employees referred to by the claimant who had made alternative arrangements did not work in the claimant's area. The claimant was not looking for flexibility in hours but rather a reduction in hours.

In response to the Tribunal the HRM stated that she had not invited the claimant to come in and discuss the matter. She did not ask the claimant exactly what hours she wanted. The claimant was contracted to work 45 hours per week. She did not advise the claimant that she could invoke the grievance procedure. She first phoned the claimant around 3 February 2011. She could not recall when the claimant phoned her back.

The Operations Director gave evidence. The HRM and the claimant's line manager came to him to discuss the claimant's request for reduced hours. The HRM said that the claimant was looking for part-time or reduced hours. He decided it was not possible because of the workload. The section organised transport, accommodation and payments for up to 400 workers in France who called with queries on a daily basis.

During cross-examination the Operations Manager stated that 8am-6pm would have been fine, but this was not put to him as a possibility. He did not ask what reduction was sought.

Determination:

Dissenting opinion by Ms N Greene:

The claimant whilst on maternity leave spoke to the Human Resource Manager and explained her difficulty in starting at 7.30am as the crèche she wished to place her child in did not open till 7.45am. This would necessitate her changing her starting time from 7.30am to 8.00am and finishing at 6.00pm instead of 5.30pm. This would not have meant a reduction in her working weekly hours. The HRM did not invite the claimant to discuss the matter.

The HRM, Line Manager or Operations Manager did not ask the claimant what hours could she work or invite her to clarify the arrangements that she sought in order to facilitate leaving her child in the crèche.

During cross-examination the Operations Manager stated that 8.00am - 6.00pm was fine but this was never put to him. The claimant stated that if she had been offered 8.00am - 6.00pm she could have returned to work.

I find that the conduct of the employer was unreasonable in dealing with the claimant's request to change her hours of work by half an hour (½ hour) to facilitate her taking her child to the crèche. The claimant was left with no alternative but to terminate her contract of employment.

I find that the claimant's claim for constructive dismissal under the Unfair Dismissals Act 1977-2007 is warranted.

End of dissenting opinion.

Majority Decision:

The claimant worked for the respondent company and took maternity leave on 3rd October 2010. She was due to return to work on 4th April 2011 and was contacted by the HR Manager to enquire as to when she would be starting back to work. The respondent company did not look to change any of the conditions or terms of employment. The claimant expressed a difficulty with recommencing work on the usual hours and in her own evidence requested a reduction in hours. The respondent company believing that the claimant was looking for a reduction in hours investigated the possibility of same for the claimant's benefit. In evidence it was clear that the respondent company could not accommodate the reduction hours and advised the claimant accordingly. The claimant then elected to resign from her position without invoking the grievance procedure.

It was clear from the evidence on both sides that the claimant in requesting a reduction of hours had led the respondent to believe that she could not work the designated hours required. It was also clear from the evidence that at no time had the respondent company any issue with the claimant nor did they seek to contrive a situation to remove her from employment. The claimant of her own volition without invoking the grievance procedure terminated her own employment expressly by resignation. At all times the claimant had the alternative to invoke the grievance procedure in relation to her request for a reduction of hours. In the circumstances

the respondent cannot be deemed to have acted unreasonably and the claimant's case fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)