

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE
-claimant

CASE NO.
UD2450/2009
RP2839/2009

Against
EMPLOYER
-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. S. Mahon

Members: Mr. D. Morrison
Ms H. Henry

heard this claim at Carrick-On-Shannon on 22nd July 2011

Representation:

Claimant: Patrick Duffy, Solicitors, Carrick-On-Shannon, Co. Leitrim

Respondent: Mr. Michael O'Sullivan, HR Advisor, Arra Hrd Limited,
Castlelost West, Rochfortbridge, Co Westmeath

The claim under the Unfair Dismissals Acts 1977 to 2007 was withdrawn at the outset.

Claimant's Case

The respondent is an organisation that provides home help to people with disabilities. The claimant commenced employment with the respondent on the 1st of November 1998. Her first assignment was as a personal assistant to J. The claimant's hours were 10.30am to 2.00pm Monday to Friday equating to 21 hours per week. This assignment continued until 2008. In September 2008 the claimant's hours were reduced to 13 hours per week. An RP9 was served on the respondent on the 3rd of November 2008 as the claimant's hours had been reduced to 7 hours per week from the 10th of October 2008. There was no discussion around this RP9 with the respondent. The claimant's hours were increased to 19 hours per week in November 2008. The claimant worked 14 hours with J and 5 hours with R.

In February 2009 J went into hospital so the claimant no longer worked the 14 hours with J. The claimant's remaining 5 hours with R became unviable; it was 5 hours over two days and consisted of an 11 mile round-trip each day. The claimant asked the respondent could

she complete the 5 hours in one day but this was declined by R. The claimant advised the respondent that she could no longer work the 5 hours with R which resulted in the claimant having no hours of work. The claimant was not put on lay-off or asked to take annual leave. In May 2009 there was a suggestion of alternative work for 2 hours but no formal offer was made by the respondent.

In May 2009 J returned home from hospital. The claimant was informed that there was 21 hours of work available but it was over a 7 day period. The hours were broken down as follows; 8.00am to 9.00am, 12.30pm to 1.30pm, 5.30pm to 6.00pm, 10.00pm to 10.30pm seven days a week. The claimant could not work 7 days a week effectively being available to work all day. The claimant chose to work 10 of the available 21 hours. The claimant understood that she could not have picked 15 hours over 5 days, it had to be 21 hours over 7 days or the 10 hours she chose. The claimant requested additional hours in an alternative position as 10 hours was not enough, but there were no more hours available for her. The claimant went on sick leave.

By letter dated the 9th of June 2009 from the claimant's representative the claimant served a RP9 notice to claim redundancy on the employer as her hours had been reduced by half. The respondent contested the claimant's entitlement to redundancy and served a counter notice as detailed in the response letter. The respondent reiterated that there was 21 hours of work available to the claimant for the shifts as above. The claimant resigned by letter of the 28th of September 2009.

Respondent's Case

The respondent employs approximately fifty-five care workers. The respondent is funded by the H.S.E. and is subject to the reviews and recommendations made by the H.S.E. The claimant's varying and reduced hours all arose from either direction from the H.S.E. and the fact that J went into hospital.

The claimant's hours were reduced from 21 hours to 7 hours from the 6th of October 2008. As a result the claimant notified the respondent of her intention to claim redundancy. The respondent informed the claimant that as well as the 7 hours currently worked she would be given 5 additional hours with R and a further 7 hours which would bring the claimant back to 19 hours; as a result the claimant withdrew her Redundancy claim.

When J went into hospital the claimant's hours were reduced to 5 hours per week. The claimant voluntarily gave these hours up. As part of the claimant's contract she is required to be flexible in her duties and hours of work. The claimant had used all her annual leave entitlement so could not use it to cover the short-time. J returned home from hospital in May 2009. Following an assessment of J's needs a rota was compiled for 21 hours worked over 7 days. The claimant was given first choice of these hours. The respondent never expected the claimant to work 7 days a week. The claimant could have worked the morning, afternoon and early evening shifts Monday to Friday. The claimant accepted 10 of the available 21 hours. The respondent offered the claimant an additional 2 hours but this offer was declined by the claimant.

On receipt of the RP9 in June 2009 the respondent issued a counter notice stating that her normal 10 hours with J were still available, the 5 hours with R were still available and there was an additional 2.5 hours available for her, equating to 17.5 hours per week. The respondent presumed they would have additional hours available on top of these to cover annual leave over the summer period. The respondent attempted to call and text the claimant but received no

response. The respondent then had to write to the claimant to arrange a meeting to discuss her return to work as she had been on sick leave since the 8th of July 2009. The claimant wrote to the respondent resigning her position on the 28th of September 2009. The respondent was shocked and contacted the claimant to see if she would re-consider her resignation.

Determination

Having carefully considered the evidence the Tribunal determines that the claimant's contract was varied from 21 hours to 19 hours per week. The claimant accepted the new terms of the contract. The claimant served the RP9 form based on her working hours being reduced by half. The claimant worked 10 hours per week as part of a 19 hour per week contract, therefore her reduced working hours were not less than half her normal working hours. The Tribunal finds that a valid redundancy situation did not exist, consequently the appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)