

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE – *claimant*

CASE NO.
UD820/2010

against

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. G. Hanlon

Members: Mr. T. O'Sullivan
Mr. O. Nulty

heard this claim at Drogheda on 3rd May 2011

Representation:

Claimant: Ms. Claire McQuillan of Macguill & Company Solicitors,
5 Seatown, Dundalk, Co. Louth

Respondent: Ms. Alinore McMahon instructed by Ms. Bernadette Heaney of Tiernans
Solicitors, 15 Church Street, Dundalk, Co. Louth

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant gave evidence. She claimed to have been constructively dismissed. The claimant worked as a laundry assistant. She worked with 2 colleagues. There was plenty of work with 8 machines to use. When the spa opened there was extra work because of all the towels. She worked a 40-hour week over 5 days.

On 4th January 10 the director called a meeting of all the full time staff to discuss a reduction in working hours. The claimant was on annual leave but nevertheless she came to the meeting. It was usual for the director to call a meeting and reduce working hours when business was quiet in January.

When the claimant returned to work after her annual leave in January 2010 she found her working conditions worse than in previous periods of short time. On previous occasions she had continued

to work in the laundry. This time she was expected to do the laundry and Hoover the foyer and clean bedrooms. There was far too much work for 1 person to do. Her back became sore from the extra work.

Also she lost her FIS benefit when she stopped working full time. This had also happened in previous years but in 2010 other benefits were not immediately available. There was a wait of about 6 weeks. The result was a serious strain on her finances.

The claimant did not immediately raise her concerns with management she wanted to see how the new arrangements would work out. However working part time did not work out for the claimant. She found the increased workload stressful and she could not afford to work part time. The claimant resigned on 24 January 2010. The housekeeper informed the claimant that she would not receive a redundancy payment. She asked the director for a redundancy payment but he said he could not afford to pay it because he had no money. The director also told the claimant that she was outside the one-week's limit from the meeting. This was the first time she heard of a time limit on making a request for redundancy. After she was refused redundancy the claimant often was left to work on her own.

The director refused to meet the claimant before she ceased working on 7th February, having worked out her notice.

Respondent's Case

The general manager gave evidence. In January 10 there was a downturn in business and a decision was made to call a meeting to discuss reduced working hours. Some staff would need to work a 3 day week. They wanted to hold on to key staff. The director thanked staff for their hard work over a busy Christmas season. Business was away down until at least St. Patrick's Day so it was necessary to reduce staff hours. The head of each department was asked to draw up a rota reflecting the reduced working hours. All the rotas were given to the general manager.

The director said at the end of the meeting that there was an offer of redundancy for a week. No minute was made at the meeting and there is no documentary evidence of the time limit.

The staff accepted the need to reduce working hours. The weekly function sheets showed that the business was not there. It was back to reality. After Easter business improves with more leisure breaks and weddings.

The claimant worked in the accommodation department. When there was enough business 2 staff members were on duty in accommodation one doing laundry and one doing the rooms. On rare occasions one staff member was on duty and she would look after the common areas, bedrooms and the laundry.

The rotas for the claimant's area were drawn up by the accommodation manager on Saturday and given to staff on Sunday. The general manager oversees the rotas and after the working hours were reduced she ensured that the available hours were allocated in a balanced way. If someone works a four-day week she is not entitled to social welfare benefits. Therefore the rota was organised so that staff members worked either 3 or 5 days each week. The time sheets show the hours actually worked. There are a number of part time staff who can be called in at short notice when needed. These staff members do not appear on the rotas but do appear on the time sheets. The level of room occupancy varies widely but this is the nature of the business.

After the reduction in hours was implemented the claimant did not express any concerns to the general manager. Following the meeting the claimant was not given a copy of the hotel's grievance procedure neither was she reminded of its existence. A copy of the grievance procedure is available in the staff canteen.

The claimant gave her notice to the under manager. The general manager approached the claimant to confirm the date she was leaving. The claimant did not mention requesting a redundancy payment. The claimant's request for a redundancy payment was refused because her request was outside the one-week time limit. One member of staff was paid redundancy.

The accommodation manager gave evidence. She draws up the rotas for the accommodation department. The accommodation department looks after cleaning, housekeeping and laundry. The accommodation manager carries out these tasks. A person working alone is expected to clean 15 rooms in a day. However if she is also doing the laundry she is expected to clean 10 rooms.

The accommodation manager attended the meeting on 4th January 10. The 40 full-time attended. They could see that business was bad. When business is slack there is less cleaning and dusting. Redundancy was available for a week. The staff handbook was not mentioned at the meeting.

The week before she resigned the claimant did not say anything about her back to the accommodation manager. The accommodation manager noticed that the claimant was tired but it was a heavy week. The accommodation manager did not send a text message to the claimant neither did she receive one from the claimant.

The director gave evidence. January 10 was like January 09. He did not want to lose jobs, therefore there would be three-day weeks. He said that if anyone wanted redundancy it would be available for a week. The next day one person asked for redundancy. He was the only one made redundant. At the meeting there were no queries concerning the offer or the time limit.

The director refused to see the claimant when she asked to see him. It is the general manager's job to deal with staff. The director refused to make the claimant redundant because she made her request outside the deadline. He did not take into account that the claimant was 8 days back from holidays when she made her request neither did he take into account that she had worked there for 9 years.

The legal representatives for both the claimant and the respondent made submissions to the Tribunal.

Determination

The Tribunal carefully considered the evidence and the submissions given. To establish that she was constructively dismissed the onus is on the claimant to demonstrate to the Tribunal that she left her job because the behaviour of her employer or her working conditions were intolerable. The Tribunal accepts that the reduction in her hours of work caused the claimant considerable difficulty. However she did not raise her concerns about the changes to her working hours and in the duties she was expected to perform with her managers and therefore they were not given the opportunity to address her difficulties.

The claimant experienced considerable financial stress as a consequence of changes in the way social welfare benefits were delivered. However, these difficulties were not due to the actions of the

respondent. The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)