

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE *-claimant*

CASE NO.
UD2221/2011

Against

EMPLOYER *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr R. Murphy
Mr. J. Dorney

heard this claim at Dublin on 4th June 2013

Representation:

Claimant: In Person

Respondent:

Respondent's Case

The respondent employed the claimant as a carer for his mother (MR) from May 2008. The claimant returned home for the month of May 2011. On her return to Ireland she submitted a medical certificate to cover the period from the 4th of June to the 27th of June 2011.

On the 28th of June the respondent requested a meeting with the claimant to update her on the condition of MR and to ascertain if the claimant was fit to work. During the claimant's absence MR's condition had deteriorated and she had been admitted to hospital. As a result the duties involved in caring for MR significantly increased in volume and difficulty; the carer role had changed considerably.

When the additional duties were outlined to the claimant she responded that she was unsure if she would be able for them. The claimant was anxious about MR's health but also concerned for her own health. The claimant indicated that she would not have the capacity for the new role and as a result was offered redundancy. The claimant readily accepted the redundancy and the meeting ended very cordially.

The respondent's brother was diagnosed with terminal cancer. In order to care for both him and MR the family employed temporary agency staff in July for eight weeks before taking over

MR's full-time care themselves.

Claimant's Case

The claimant accepts that the role had changed and that 'they're looking for 24-7, I'm not able for 24-7.' During the course of the meeting the claimant was informed that the role had changed and she responded saying she was only able 'for legal hours.' The respondent said that they were considering a nursing home for MR or a family rota for full-time care. The claimant asked if she was 'being sacked', the respondent then offered her redundancy.

The claimant accepted the redundancy and was happy with the situation until the following week. She went to collect her belongings and discovered the agency staff caring for MR. As the claimant was under the impression that her role was redundant this upset her as she felt that she had been replaced.

Determination

The Tribunal is satisfied that a genuine redundancy situation existed within the respondent. Due to the deterioration of MR's health the carer role had increased significantly. The claimant was offered the option of accepting this changed role but declined. Sec 6 4(c) of the UnfairDismissals Act 1977 states,

*'Without prejudice to the generality of subsection (1) of this section, the dismissal of an employee shall be deemed, for the purposes of this Act, not to be an unfair dismissal, if it results wholly or mainly from one or more of the following:
(c) the redundancy of the employee,'*

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

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)