

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

UD1321/2005

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal

(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. P. O'Leary
Ms. H. Kelleher

heard this claim at Cork on 15th November 2006

Representation:

Claimant(s) : Mr. David Waters, Sullivan Waters & Co., Solicitors,
19 West End, Mallow, Co. Cork

Respondent(s) : Mr. Stephen O'Sullivan B.L. instructed by Beauchamps, Solicitors,
Riverside Two, Sir John Rogerson's Quay, Dublin 2

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant commenced employment at the Cork branch of the respondent company in March 2002. She hired most of the team that worked with her and had thirty people reporting to her. When the company relocated offices in 2004, she announced her pregnancy to her manager. At that time, she was responsible for maintaining a large service level agreement with a contractor among other projects. When she commenced her maternity leave on the 10th December 2004, she had a staff of ten people reporting to her. She had made it clear to the company that she intended to return to her employment after her maternity leave. She attended the company twice for meetings while on leave in relation to the accounts she managed and returned to work on the first week of August 2005. A colleague had been promoted to cover her work while she was on leave. She expected that person to revert to his previous job upon her return.

When she returned to work, she covered a colleague's desk while that person was on leave and after that no duties were assigned to her. She reported for duty at 7.00am and was the only team leader on duty for one hour each morning. She dealt with all queries from the service desk and any others that would arise and then she would be idle for the rest of the day. She requested meetings on several occasions with her manager requesting an assigned position but her manager never addressed her queries. She was told to be patient, that the office was being re-organised. This

continued for three months. She attended five meetings with the HR manager and was not given a satisfactory answer as to why she had not been assigned to a particular team/project. She began to question her abilities and her confidence plummeted. On attending another meeting with a senior manager, she was asked to change her working hours and she agreed to this request. She was also asked if she would consider taking up a position in another country for the company but she refused. She would break down at night in “floods of tears” and she couldn’t sleep. She fell ill and went on sick leave for three weeks in October 2005. The HR manager telephoned her and left a message to enquire after her during this time.

There was a large contract lost at the company and staff were being made redundant. She went to check her emails at work and all had been taken off the server and deleted. She volunteered to take parental leave and work a three-day week but that suggestion was “knocked down”. She finally left her employment on the 27th October 2005. The claimant established loss for the Tribunal.

Under cross-examination, the claimant told the Tribunal that she became aware informally that a large contract had been lost, but no restructuring took place when she resumed duty after her maternity leave. She was told to move desk which took up a full day as her supervisor refused to discuss her role. The claimant left her job on 3rd October 2005 on sick leave. She received pay until 27th October. She attended the office on the 27th October to leave documents that she had in her possession.

Respondent’s Case:

The only witness was the HR manager at the Cork branch of the company. She told the Tribunal that the claimant had worked as a project manager on the service desk. It was usual for the company to move personnel to different roles within the organisation. The claimant’s position was advertised before she commenced her maternity leave. The successful candidate assumed the role in January 2005 as a permanent position. At this time it was appropriate to promote that person as there were team leaders needed due to the amount of staff and also as a morale boosting exercise. At that time morale was low on the service desk and the company wished to promote from within.

The company lost one of their large contracts and as staff were leaving, they were not being replaced. There were no redundancies. When the claimant returned from maternity leave on the 2nd August 2005, she filled in for a team leader that had left employment. The first the witness knew that there was a problem was when the claimant sent an email on the 26th September 2005. When she received this, she telephoned the global HR desk of the company to try to find solutions. She received an email from the claimant on the 30th September containing various suggestions but all of these were short-term tasks. She further liaised with the legal and compliance manager. She sent an email to the claimant and this manager trying to find a permanent solution for the claimant. She put arrangements into place for the claimant to assume a team leader role effective from the 5th October but the claimant was on sick leave at that stage.

The witness telephoned the claimant on the evening of the 5th October to confirm the new role but it became clear that the claimant was no longer interested. The witness made it clear that the door was open to the claimant to change her mind and take up the position. The claimant refused an exit interview and refused to attend a meeting on the 3rd November 2005.

Under cross-examination, the witness told the Tribunal that the claimant had received a pay increase in 2005 for her work in 2004. The claimant was replaced on maternity leave because the company needed to keep that particular area staffed. If the claimant had not gone on maternity

leave, she would not have been replaced. The claimant had ten people reporting to her as a project leader and upon her return she was assigned as a team leader with no staff. The witness tried to accommodate the service desk and the claimant in a way that was beneficial to both. She was waiting for the transfer of a large project to that branch of the company to assign the claimant to that role. This position would have been equal to if not better than the one the claimant had previously held.

The claimant had held weekly meetings with her supervisor since her return but the witness was not aware of the extent of the situation until she received an email from the claimant on the 26th September 2005. The claimant had been back at work two months at that stage. The final offer was made to the claimant on the 5th October over the phone.

Determination:

The Tribunal considered all of the evidence adduced and documents submitted by both parties to this case. The claimant had performed well in her job and had left to go on maternity leave. Another person was promoted to replace her. This promotion was a permanent position. The Tribunal is of the opinion that there was no effort made to accommodate the claimant or designate her to a specific role upon her return. As a direct result of this, the claimant left on sick leave and subsequently resigned.

The Tribunal determines that the claimant's position was replaced while she was on maternity leave. There were no arrangements put into place to accommodate her upon her return. The claimant was left with nothing to do and no concrete assurance that the situation would improve. Therefore, the Tribunal finds that the claimant was constructively dismissed and awards her the amount of €12,500.00 under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)