

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

UD457/2006

Against

RP226/2006

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001 REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. M. Forde
Mr. K. O'Connor

heard this claim at Cork on 3rd July 2007

Representation:

Claimant(s) : Mr. Richard Irwin, Irwin, Kilcullen & Co., Solicitor, 56 Grand Parade, Cork

Respondent(s) : Ms. Gillian Keating, J.W. O'Donovan, Solicitors, 53 South Mall, Cork

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant gave evidence and her position was that she had been constructively dismissed from the respondent company. She commenced employment with the respondent on the 14th February 1995. She outlined details of an accident she had outside work on the 30th October 2004. She injured her neck and back. She attended her general practitioner and was declared unfit for work. She was contacted by the company and felt under pressure to return to work. Three doctors, including a company nominated one, and all declared her unfit. She returned to work on a part time basis on the 16th May 2005 to the training room. On returning to fulltime hours, she was unable to perform her duties on the production line and was relocated to the training room. She contacted her supervisor and requested part-time duties. Human resources requested her to attend a meeting. She informed them that she was in too much pain to carry out her duties and they told her to go home and contact her doctor. They denied her request for part time work and said there was none available.

She attended the company doctor in October and he certified her unfit to resume her duties. She wrote to the respondent on the 20th January 2006 requesting redundancy as she had heard that the

company was making some staff redundant. Their response was that she was no longer an employee since the 6th December 2005. She had complied with all requests from the company and believed she was entitled to redundancy as she had eleven years' service. The claimant has since undergone a medical procedure which has relieved most of the symptoms of her illness.

Under cross-examination, the claimant told the Tribunal that she and her supervisor enjoyed a good working relationship. She had submitted certificates previously when she had been ill. She was absent for six months and could not understand why the company had terminated her contract even though her supervisor had told her they were sorry to see her leave. Correspondence was opened by the claimant indicating that there was no possibility of offering her part time work.

Respondent's Case:

The Human Resources Manager (HRM) gave evidence. He told the Tribunal that the company had issues regarding the claimant's absenteeism before this illness occurred. There had been a series of meetings where the claimant had been encouraged to improve her performance. In his experience, the company was a fair employer and had a positive attitude towards their employees. HRM reported directly to the General Manager. All of the senior management team were informed of the redundancy situation in November 2005. There was a decision made to continue operations as normal because the decision may be postponed. This did not happen as the parent company made a decision to relocate to a different country. The respondent was informed immediately prior to the Christmas break.

Under cross-examination, HRM said that the company was constantly under review from the parent company. Decisions were made on the basis of profitability. The announcement was made to all employees on the 19th January 2006 and a redundancy package was arranged. There were arrangements in place for some employees to work on a job-sharing basis. It was up to the individual employee to find a colleague who was willing to share the position. There were no part-time positions available at the company.

The claimant's supervisor (S) gave evidence. He said that he worked directly with the claimant for the duration of her employment. They had ongoing discussions regarding her attendance. At a meeting in April 2005, the claimant was informed that her position could not be kept open indefinitely. This was reiterated at a meeting in June and again in August. There was precedent for an employee to come back to work on a part time basis and lead into full time work. When the claimant returned to work for two weeks, S and HRM decided that the claimant was in pain while carrying out her duties and they couldn't leave her like that. The nature of her injury was not conducive to the type of work she was doing. S had a meeting with the claimant and a member of human resources. They encouraged the claimant to return to her general practitioner to be assessed for fitness.

There were subsequent meetings and the subject of the claimant returning on a part-time basis was not raised. There was no other suitable area for her to work given the nature of her injury. At the final meeting, S explained that there was no alternative but to terminate her contract of employment. The claimant told S that "(S) had done all (he) could".

Under cross-examination, S said that the claimant had returned to work for two weeks between the 16th and 30th May 2005 and all subsequent medical certificates indicated that she would be unfit to return to work on a fulltime basis for an indefinite period. She had been absent from work for over

twelve months. The medical information was that there was no expected improvement. S became aware of the redundancy situation on Christmas week. The claimant had left employment at that stage.

Determination:

The Tribunal considered the evidence in this case. The claimant was absent from work through illness and was unable to furnish the respondent with a date for her return to work. The Tribunal is of the opinion that the claimant did not establish that she was constructively dismissed under the terms of the Acts. Accordingly, the claim made under the Unfair Dismissals Acts, 1977 to 2001, fails.

The claimant was not an employee when the redundancy situation arose at the respondent company. Consequently, the appeal made under the Redundancy Payments Acts 1967 to 2003, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)