

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD1255/2006

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.
Members: Mr. F. Moloney
Ms. A. Moore

heard this claim at Dublin on 1st May 2007

Representation:

Claimant(s): Ms Michelle Carey B.L. instructed by Mr. Marcin Szulc,
Maguire McClafferty, Solicitors,
8 Ontario Terrace, Portobello Bridge, Dublin 6

Respondent(s): Appeared In Person

The determination of the Tribunal was as follows: -

Claimant's Case:

The claimant gave evidence through a translator. She told the Tribunal that she commenced employment at the end of June 2006 and she returned to her native country for medical reasons for two weeks at the end of July. She returned to the respondent and told them that she was back for good. She conveyed this through another employee, as she was not conversant in English. Her employment ended in November 2006. Another employee was hired two weeks before she was dismissed and the respondent company was always busy. She became pregnant during her employment and displayed symptoms of nausea and weakness towards the end. She told a colleague (L) about her pregnancy about two weeks before her employment ended, as she wanted his help to tell her employer. L informed the respondent first. In the claimant's opinion, this was so that L's girlfriend could get the position that the claimant held.

The respondent came to her on the eve of her dismissal (4th November 2006) to tell her that they had sufficient staff and would not need her services any longer. The claimant telephoned L and asked him if he knew about it. He was surprised and when the claimant asked him to speak to the respondent and confirm her suspicions, he did so and translated the notice of termination to her. On the 9th November, the claimant handed a note to the respondent to say that she should not be dismissed due to the fact that she was pregnant. She believed L had informed the respondent of her situation prior to her dismissal.

Under cross-examination, the claimant affirmed that she had discussed coming back to her employment after her break in July. She was unsure if she had received a P45 from the respondent. She had been given a document prior to her departure in July and was told to bring it back when she

recommenced in August. She had not discussed her pregnancy with the respondent prior to her dismissal.

Respondent's Case:

The respondent gave evidence. She told the Tribunal that the claimant commenced employment as a kitchen assistant. She left in July 2006 and the respondent had a conversation with her confirming that she was not returning to work. The claimant told her that she was going back to her native country for medical reasons. She was unaware if she would be in a position to return to Ireland in the future. The respondent issued her with her P45. On the 18th August, the claimant returned to the respondent. She indicated that she was looking for work by way of another employee (C) that could speak the language. Through C, the respondent explained that she had little or no work available at that time but would see what she could do. There was nothing permanent available and she got C to emphasize that fact to the claimant.

The respondent had arranged for another person (M) to commence employment in October. This arrangement had been made in July. The claimant recommenced employment on the 23rd August 2006. C was leaving at the end of August and other staff members were on holidays so the claimant filled in for these. The claimant was aware at all times that M was starting in October and the only reason she was there was for holiday relief. The respondent had no idea that the claimant was pregnant. One day she was unwell and when the respondent enquired, the claimant said she was on antibiotics. L did not inform her that the claimant was pregnant and she was only made aware of the fact when she received the note from the claimant during her week's notice. She had a discussion with the claimant confirming that she was unaware of her pregnancy and was shocked. This would not change the status of the dismissal.

Under cross-examination, the respondent said that the claimant's job involved a lot of standing during the day. As far as she was concerned, the claimant broke her service and was leaving employment permanently in July. The claimant never mentioned holidays. She accepted that the claimant was not taken back purely to cover holiday leave. L and M had been hired in July when the claimant had left initially. L commenced employment at the end of August and M was due to start in October. She denied that the claimant appeared heavily pregnant, as was portrayed in photographs shown to the Tribunal.

Determination:

There was a direct conflict of evidence in this case. The claimant did not have the requisite one year's service in the employment of the respondent. The onus was on the claimant to show that she was dismissed by reason of her pregnancy, for the Tribunal to have jurisdiction to hear this claim. Having heard the evidence and submissions, the Tribunal determines that on the balance of probability, the claimant failed to discharge this onus and accordingly, the claim made under the Unfair Dismissals Acts, 1977 to 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)