

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

UD1217/2006

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms M. McAveety

Members: Mr. M. Flood
Mr P. McAleer

heard this claim at Cavan on 7th December 2007

Representation:

Claimant(s) : Mr. Aidan Walsh, D12 Congress Centre, Drimnagh, Dublin 12

Respondent(s) : In person

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant gave evidence. She stated that she had been employed by the respondent purchasing and controlling stock.

The claimant told the Tribunal that the respondent had moved premises but the premises were inadequate. There were no proper toilet facilities; she had to leave the premises to travel three miles home whenever she needed to go to the toilet.

The new acting General Manager (L) hired to take over the job of purchasing stock and a member of staff was moved from the factory floor to the office to help out. She explained to the Tribunal that she had told L that she was pregnant. A few of the other staff were also aware.

When the owner of the business told her she was to be dismissed he then offered her an alternative position as a production operative. She declined the offer.

On cross-examination she explained that she was seven weeks pregnant when she was dismissed.

When asked had she reported her pregnancy officially, she replied that she had told L but had not informed the owner of the business as he was away on business. She had informed L one week before she was dismissed. When put to her, she accepted that her performance had not been an issue but stated that it had been her pregnancy. When asked, she stated that she had informed L whenever she left the premises to use the toilet facilities at home.

When asked by the Tribunal, she stated that the owner had asked her to purchase two portaloos, which were quite expensive. He later wanted to replace them or get rid of one of them so all staff would share the remaining one. She told the Tribunal that most of the other female staff used toilet facilities “down the town”.

The claimant gave evidence of loss. She is presently looking for employment.

Respondent’s Case:

The owner of the respondent business gave evidence. He explained that this particular business had been trading for over four and a half years but had never made money; in fact it had made a substantial loss. The business had been located in rented premises and had relocated six months previously.

He stated that he had had no problems with the claimant and she had been a very good worker. After careful decision making he decided that five positions had to be terminated, including the claimant’s. The hard decision was made six to eight weeks before the claimant was dismissed. He explained that L was the office Manager and both he and L could perform the claimant’s job.

When he informed the claimant that he would have to let go, she informed him that she was pregnant. He told the Tribunal that he had offered the claimant a position working on the factory floor but she declined the offer. When asked, he stated that, at present, he had a female member of staff who was seven months pregnant working for him in the operations section.

When asked about the issue of the toilet facilities, he explained that the business had recently relocated. Two chemical toilets had been purchased in the interim of sorting proper toilet facilities in the factory. He told the Tribunal that he was unaware that there was a problem with the chemical toilets. He had other premises down the road and the staff could have used the toilet facilities there.

On cross-examination he explained that L was now doing the claimant’s work. He refuted that staff had struck over the toilet facilities. He explained that he had sorted out the toilet facilities two or three months before the day of the hearing. When asked, he explained the position he had offered the claimant, pressing uPVC doors. When put to him that it was heavy work for a pregnant woman, he said that it was the only position he could offer her. He also stated that he had offered her the position before the claimant informed him she was pregnant.

When asked, he explained the positions of the other four staff members that had either left themselves or were let go. When asked about an advertisement in the local people for staff, he stated that sometimes he advertised for more staff but that he may have needed someone at the time.

When asked by the Tribunal how much notice he gave to some staff, he replied two weeks. He explained that the claimant had been paid all her entitlements. The claimant had not been replaced.

Determination:

Having heard all the evidence adduced by both parties, the Tribunal finds that the claimant failed to discharge the duty to prove her case of dismissal for the reason of pregnancy. Accordingly, her claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)