

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD887/2006

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mahon BL

Members: Mr. P. Pierce
Mr. J. Moore

heard this claim at Navan on 10th May 2007 and on 10th December 2007

Representation:

Claimant: Mr. Ken Stafford, 7 Castletown Court, Celbridge, Co. Kildare.

Respondent: Mr. Stephen Sands, CIF, Construction House, Canal Road, Dublin 6.

The determination of the Tribunal was as follows:-

The fact of dismissal was not in dispute.

Respondent's Case:

The managing director of the respondent company gave evidence. The claimant was an assistant quantity surveyor. She prepared tender packages for sub-contractors.

The company was doing more work than it could manage and as a result was under financial pressure and was losing money. In May 2005 a consultant was appointed and he recommended that a strong general manager be employed to oversee the work. The consultant did not produce a written report, but he did identify the quantity-surveying department as an area where the company was losing money.

On 20th June 2006, the senior quantity surveyor handed in his notice. He had decided to go freelance. The managing director did not receive advance notice of this. The senior quantity surveyor would continue to do work for the respondent company. The managing director decided that without a senior quantity surveyor, there would be no role for an assistant quantity surveyor. The managing director gave notice to the assistant quantity surveyor, the claimant, on the same day as the senior quantity surveyor gave his notice. In evidence the managing director said he made the claimant redundant. However there is no mention of redundancy in the letter signed by the managing director that was given to the claimant also on 20th June 2006.

The managing director when he was informed of the claimant's concerns about entitlement to maternity benefit referred the matter to his accountant. He was advised that the claimant would be entitled to maternity benefit, but he did not pass this information on to the claimant. He had intended to give her a reference.

He did not discuss the financial state of the company with the claimant. The claimant was offered the option of working free-lance for the respondent. She considered the offer but said it did not suit her circumstances. The offer was not given in writing but the managing director said that the claimant would be at no financial loss.

After the claimant worked out her notice, the respondent used contractors to do the quantity surveying work. This cost more. The respondent now employs three quantity surveyors and no longer contracts out this work. The consultant did not advise making the claimant redundant. The managing director did not remember anyone else being made redundant at that time.

The general administrator gave evidence. She was present at the meeting at which on 20th June 2006 when the managing director let the claimant go. The reason given was that the senior quantity surveyor had handed in his notice. She did not know that the claimant was pregnant until 2 days later.

The witness was not involved in the decision not to extend the time to be worked by the claimant. The claimant would have been told of the decision but not by the witness.

Claimant's Case

She heard on Tuesday 20th June 2006 that she was being let go. There had been no indication of problems. The financial position of the company was not mentioned. No explanation was given to her for her dismissal she was just given the letter. The managing director mentioned further work as a sub contractor. However he said nothing about working hours, pay or tax.

The claimant received no notice of the meeting. The general administrator called her and said 'no need to bring anything', which she thought was strange. The morning of the meeting she had a medical appointment. She had obtained a letter confirming her pregnancy. She raised her concerns about qualifying for maternity benefit with the managing director. He referred the matter to the general administrator. No one in the company discussed the issue with her.

She worked part-time for 12 or 14 weeks in order to qualify for maternity benefit. She did not work as a quantity surveyor then. She did not have time to undertake a job search. She had to be working the week she was 22 weeks pregnant, otherwise she would not receive maternity benefit.

The claimant has a diploma in quantity surveying. Her experience is in house building. She is in a difficult situation looking for a job, because she did not get a reference.

She did have a contract of employment. She is not employed at present.

The claimant's husband gave evidence. He looked up vacancies for quantity surveyors on the net. There was an advertisement for an intermediate quantity surveyor in Meath. He phoned Coastway using a pseudonym and was informed that the vacancy was with Midland Construction & Engineering. The job was absolutely similar to the claimant's. The respondent suggested that the advertisement had not been placed by them but by a separate company called Midland Construction and Civil Engineering.

A colleague of the claimant's husband gave evidence. He was present when the phone call was made to Coastway and stated that the company with the vacancy for a quantity surveyor was Midland Engineering and Construction.

Determination

Having carefully considered the evidence adduced the Tribunal finds that a redundancy situation did not exist when the claimant's employment was terminated. The respondent did not use any procedure in dismissing the claimant. The Tribunal finds that the dismissal was unfair under the Unfair Dismissals Acts, 1977 to 2001. An award of €14,000.00 is made.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)