

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO. UD965/2007

Employee

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr P. Pierce
Mr A. Butler

heard this claim at Dublin on 9th January 2008

Representation:

Claimant: In person

Respondent: In person

The determination of the Tribunal was as follows:

Background:

The claimant commenced employment as a sales representative for the respondent on 1st August 2006. On 9th August 2007 the respondent issued four weeks notice of termination of employment to the claimant. It was the respondent's case that the dismissal was due to the financial losses sustained by the division, in which the claimant was employed as a sales representative, and the consequent scaling down of that division. It was the claimant's case that she was dismissed by reason of her pregnancy.

Respondent's Case:

In his evidence the Managing Director (MD) of the respondent company told the Tribunal that the claimant commenced employment with the respondent company on 1st August 2006 in its new division selling uniforms predominantly to the health care sector. The claimant was required to initiate and maintain sales opportunities by setting up showcases in hospitals to sell directly to nurses and to find other potential outlets. Her sales area covered the whole of the thirty-two counties.

The new business was not a success and the respondent company was suffering escalating financial losses between August 2006 and August 2007. The claimant had difficulties setting up showrooms

to showcase the uniforms and generate sales. Over January and February 2007 several crisis meetings were held with the claimant to discuss the losses being incurred by the division and her inability to address the situation. This was before the claimant informed the MD of her pregnancy on 14th May 2007. In that period an external consultant was made available to coach her, provide her with additional training and to support her in harvesting market information and managing her territory. Matters did not improve. Whilst the claimant was very good at face-to-face dealings with customers during a showcase she was not good at prospecting. A further crisis meeting was held in March at which the claimant guaranteed that she would rectify matters.

At a meeting held on 6th June 2007 the claimant accepted that her performance was a major contributing factor to the poor performance of the division. Further efforts were made over the following months to help her by redeploying staff from other divisions. One such member of staff booked twenty-two showrooms in a three-week period. The claimant ran nineteen of these showcases and was expected to re-book showrooms six to eight weeks later. However, the claimant only succeeded in re-booking two follow-on showrooms. By August the respondent company had incurred losses of €90,000 and prospects for the division were not good. The MD decided it was not worth taking further risks and issued a notice of termination of employment to the claimant on 9th August 2007. The decision to terminate the claimant's employment was made because of the financial losses being sustained by the company and the lack of future prospects for the division and was unrelated to the claimant's pregnancy.

The MD considered other sales models. On 13th August 2007, the MD offered the claimant the option of demonstrating uniforms at showcases. They were trying to create a new role whereby they would book the showrooms and the claimant would do the selling. They were intending to do this over a ten-week period as an experiment. It was also hoped that the claimant would fulfil the three remaining showcases in that period. The claimant initially accepted the offer but later turned it down.

It was not feasible to retain the claimant in a full-time capacity as the sales figures did not support this and future prospects were unpromising. Another member of staff ran the three showcases remaining at the time of the claimant's dismissal. No new showcases were booked. No one was allocated to the area. No advertising had been carried out in relation to the product since the claimant ceased working with the company. The respondent company does some minor selling by way of referrals. No other staff were hired for the uniform sales division. There was no other alternative work available in the company for the claimant.

Claimant's Case:

In evidence the claimant stated that the position was a new experience for her and a new departure for the company. She enjoyed the job but found certain aspects of it difficult, such as paperwork and getting through to the right person to set up showcases. She felt under a lot of pressure to get through to people and keeping files up to date. The colleague who had set up most of the showcases had done so on the back of the ground-work she had done. The claimant told the MD about her pregnancy in May after returning from holiday. After this, the MD documented her performance until she received the notice of the termination of her employment in August 2007. The claimant agreed that there had been meetings about the losses being sustained by the company prior to May 2007 and prior to her notifying her employer of her pregnancy. The claimant felt that work could have been found elsewhere for her within the company or as a full time demonstrator and that she had been treated unfairly. She did not wish to work as a freelance demonstrator and wanted fulltime employment. She claimed that other people had been hired since her dismissal to do her job. The claimant agreed that the minutes of the meeting held on 6th June 2007 were an accurate account of the meeting.

Determination:

It was common case that the uniform sales division was in difficulties in early 2007 and the claimant agreed that the MD had brought his concerns to her attention before she had informed him of her pregnancy. Due to the financial losses sustained in the division, the lack of sales or of any future prospect of sales the MD decided to scale down the division and dismiss the claimant. The Tribunal is satisfied that the claimant's dismissal was not due to her pregnancy but rather it was due to the lack of success of the business venture for which she had been employed as a sales representative. The MD decided to no longer actively pursue sales and accordingly the claimant's position was redundant. The Tribunal is satisfied that there was no alternative employment available. Accordingly, the Tribunal find that the dismissal was not unfair and the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)