

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD1033/2007

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L

Members: Mr. R. Prole
Mr B. Byrne

heard this claim at Dublin on 7th March 2008

Representation:

Claimant(s) :

Mr Blazej Nowak, Emigrant Advice, 1 Cathedral Street,
Dublin 1.

Respondent(s) :

Mr Tom O'Grady, IBEC, Confederation House,
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

The tribunal confirmed the details on the form TIA with both parties and agreed the figure of €302.75 as being a fair representation of the average weekly wage of the claimant.

Respondent's Case

The respondent's representative stated that they were contesting the claim for unfair dismissal on the grounds that the claimant was not unfairly dismissed. The claimant was employed under 4 separate fixed term contracts commencing on the 10th November 2006 and expiring on the 11th

November 2007. The claimant was not made redundant.

The first witness for the respondent gave evidence that she is currently employed as a manager in the company's St. Stephens Green store. She has 5 years experience with the company and worked in the Liffey Valley store from June 2005 until June 2006. The claimant was hired on the 10th November 2006 and employed as a catering assistant for 20 hours per week on a 2 month contract. She was hired for the Christmas period was given an induction training course. Approximately 7 or 8 people were hired at the same time.

The claimant was given a further contract for a 1 month period when her initial contract had expired. She was then given a further 3 month contract expiring on the 11th May 2007. The claimant was retained under the new contracts as the business needed her at that time. The store in Liffey Valley was closed for period in June 2007 for refurbishment and opened in July 2007. Prior to the closure all employees were accommodated with a fixed term contract and the claimant's final contract commenced on the 11th May 2007 and expired on the 11th November 2007.

Employees are usually made permanent after 9 to 12 months working with the company depending on their skill level. More than 50% of employees are permanent and the remainder are full/time or part/time and are employed on fixed term contracts of 3 to 6 months duration. It is the decision of the manager as to what employees are made permanent.

The second witness gave evidence that he is currently employed as a restaurant manager and commenced work in the Liffey Valley store on the last week of July 2007. After the store was refurbished in July 2007 the expected increase in business did not materialize and the company were not hitting their targets. The company was not in a position to renew contracts and 6 employees had their contracts terminated in November/December 2007 including that of the claimant. The witness gave evidence that 4 or 5 new employees were hired in the first week of December 2007 and the company were advertising for new staff. Under cross examination the witness agreed that the claimant was a good employee. He first became aware that the claimant was pregnant in August 2007. The claimant worked 25/30hours per week in September 2007. Prior to that she worked up to 35 hours weekly.

The human resources manager gave evidence of peaks and troughs in the business and people are employed on fixed term contracts depending on the needs of the business. Employees have options to apply for permanent positions in stores other than that where they are employed. The company adheres to the legislation regarding maternity leave and is accommodating to people who are pregnant while working with the company. The company does not pay maternity leave. The company had discovered its payroll was going through the roof and that's why some employee's contracts were terminated.

Claimants's Case:

The claimant gave evidence that she had worked for the company from 10th November 2006 until 11th November 2007. She was a good employee and nobody had ever complained to her about her work. She received a special recognition award including a gift voucher from the company on the 22nd June 2007. She was dismissed because she was pregnant and has been unemployed since November 2007.

Determination:

The Tribunal has carefully considered the evidence presented. The applicant brings this claim under the Unfair Dismissals legislation claiming that she had been unfairly dismissed by reason of her pregnancy. The applicant had worked for 1 year.

The Tribunal finds that the applicant is entitled to make a claim under the U.D. Acts. The applicant had completed a year's service. The service was made up of four short term contracts. The cumulative effect of these contracts was a period of continuous employment for one full year. The respondent did not demonstrate sufficient reason for the repeated use of fixed term contracts and the respondent cannot contract out of its legislative obligation by using fixed term contracts to its advantage. It is noted that the significance, or otherwise, of these fixed term contracts was not made clear to the applicant. Either way there is no time limit where the reason for dismissal relates to pregnancy.

Having established that the applicant is entitled to claim relief under the Acts the question is whether she was dismissed by reason exclusively of her pregnancy. The onus is on the respondent to demonstrate that their decision to dismiss was fair and where an employee is pregnant the respondent should have been in a position to demonstrate that her pregnancy was not relevant. The respondent failed to satisfy the tribunal that pregnancy was not a relevant factor nor did it demonstrate that the dismissal was reasonable and fair.

Of significance is the fact that the applicant had clearly been an excellent and hard working employee. She had even been singled out for a 'special recognition award' during the course of her employment. The respondent's decision to let the applicant go and then almost immediately take on extra staff flies in the face of any logic.

The applicant therefore must succeed and the Tribunal awards the claimant €10,000 under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

