

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD603/2007

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Mr D. Hegarty
Ms. P. Doyle

heard this claim at Cork on 27th May 2008

Representation:

Claimant :

Ms Elizabeth Scally B.L. instructed by Tracie M. Nolan, Anne L. Horgan & Co,
2/3 Convent Road, Blackrock, Cork

Respondent :

Mr Finbarr O'Leary B.L. instructed by Michael Powell, Solicitors, 5 Lapps
Quay, Cork

The determination of the Tribunal was as follows:-

This case was heard in conjunction with case number PW14/2008 which was an appeal against a determination of a Rights Commissioner dated the 14th of January 2008.

The evidence in respect of both matters was taken together. The unfair dismissal claim arises out the termination of the claimant's employment on the 12th of March 2007. The claimant's sole ground for her claim is that she was dismissed for reasons of pregnancy. The significance of this is that the claimant was not employed by the respondent for a period in excess of 12 months and consequently would not ordinarily have any statutory right to relief under the Act. A dismissal for pregnancy does not require 12 months criterion.

Evidence on behalf of the respondent/employer was taken initially and evidence was given by the managing director of the respondent company. The managing director gave evidence that the

dismissal which occurred in March 2007 was entirely performance related. He gave evidence that the industry norm, and certainly the standard expected by him of his recruiters was that they would achieve one placement for every three leads. He pointed to the fact that the claimant was achieving an average of one placement for every six leads.

Furthermore, he indicated that the revenue generated by the claimant (which both parties agreed amounted to €58,850.00 for the duration of her employment with the company) had been below her income target. He said that he was more concerned however about the number of placements being made by the claimant which he regarded as being at an unacceptable level.

In his evidence he said that the claimant advised him of her pregnancy sometime between the 12th and 19th of January 2007. He said that her under performance was a cause of serious concern to him at that time and he had a number of meetings with her to express his concerns with her performance and to offer her any support or assistance that he could with regard to improving. Under cross-examination he conceded that insofar as he was concerned the claimant was in a disciplinary process from late 2006 but that this might not have been adequately communicated to the claimant. He had decided however by the 1st of March that he wished to terminate her employment. He said that on that date he had a meeting with her in which he told her of his decision and gave her the opportunity to present her departure in anyway she wished to her colleagues. He agreed to continue to pay for seven weeks until the end of April 2007 so that there would not be any possible compromise of her maternity entitlements. Witness was adamant that the claimant's pregnancy had nothing to do with the termination of her employment.

Evidence was also given by the office manager on behalf of the respondent company. She said that when there were difficulties with recruiters that she would approach them directly or speak to the managing director. It was her role to distribute the leads as they came in. She felt obliged to speak to the managing director before Christmas 2006 because the claimant's returns were not in line with the other recruiters. She also spoke directly to the claimant however she did not document this conversation.

The claimant gave evidence on her own behalf. She said that she worked very hard to get into the job and to grasp the system. She felt that she was doing a good job and that this was reinforced by the managing director in various meetings that they had. She had no sense that she was under performing and certainly did not know that she was involved in some form of disciplinary procedure from late November onwards. She went on holidays at Christmas time satisfied that she was fulfilling her obligations to the respondent and when she returned to work on the 5th of January, she said that she had told the managing director of her pregnancy. The managing director did not react adversely in anyway at that time but sometime subsequently when another colleague advised the managing director that she too was pregnant, his attitude towards her, and his treatment of her changed completely. She was repeatedly called to the office and asked what could be done to improve her performance and what help she needed etc. She was told that things were not going to plan. She thought that she was getting on fine and on track to meet her targets which she said were €120,000.00 and not €150,000.00 as stated by the managing director. She now felt that she constantly had to justify herself and felt that her time with the respondent company was going to be cut short. She couldn't understand why this was happening. The managing director extended her probation period for three months, which she didn't think he was entitled to do.

She had a meeting with the managing director on the 23rd of January where he said that somebody in the company had expressed the view that this treatment of her might lead to legal action. After that meeting she felt defenseless and was given no direction. On the 1st of March the managing

director told her that things were not working out and some other career might suit her better. She was very distressed and could not understand why she was receiving this treatment. She deduced that the only reason was that a second colleague had announced her pregnancy. Other suggestions were made that she might work from home or that she might sub-contract to do in house recruitment for a client. The managing director said that he did not want to see her 'tossed out on the street', and though he was dismissing her he wanted to ensure that she would not be compromised where her maternity entitlements were concerned. He did say to her that she might be better off at home minding her son and awaiting the birth of her new child. On the day of her dismissal she emptied her desk and walked out of the building. The other staff members had no idea what was happening.

Determination:

Counsel for the claimant has urged the Tribunal that in the absence of their being legitimate performance concerns with regard to the claimant that the onus on the respondent to establish the fairness of the dismissal has not been discharged and that consequently it is open to the Tribunal to conclude that the only remaining basis for the dismissal was her pregnancy.

The Tribunal has to determine based on the evidence whether or not, on the balance of probabilities the dismissal of the claimant from the respondent company was for the reason that she was pregnant. It is noted that the vast majority of the staff of the respondent company are female. It is also noted that the respondent would have been aware at the time he employed the claimant that she was a young married woman who already had one child. The managing director also gave evidence of his policy of paying staff in full during the course of their maternity leave.

The Tribunal having considered the evidence is unable on the balance of probabilities to accept the proposition that the claimant was dismissed for reasons of being pregnant. The Tribunal has nothing further to consider as the claimant does not otherwise qualify for relief under the Act because of the length of her service.

Consequently the Tribunal dismisses the appeal under the Unfair Dismissal Acts 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

