

EMPLOYMENT APPEALS TRIBUNAL

Claim Of:
Employee

Case No.
UD163/2007

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. G. Phelan
Ms. H. Henry

heard this claim at Horse & Jockey on 14th May 2008

Representation:

Claimant: Ms. Rosemary Mallon B.L. instructed by Mr. Marcin Szulc, Maguire McClafferty,
Solicitors, 8 Ontario Terrace, Portobello Bridge, Dublin 6

Respondent: General Manager

The determination of the Tribunal was as follows:

Preliminary Issue:

The claimant commenced employment with the respondent on the 19 October 2006. Her last day of employment was the 12 December 2006. It was submitted by the claimant's representative that the claimant was dismissed by reason of pregnancy. The company disputed that the claimant had been dismissed. It was the company's case that the claimant had resigned. The Tribunal heard evidence from both parties.

Respondent's Case:

The General Manager gave evidence to the Tribunal that the claimant was employed on a temporary basis until December 2006 and he explained this to the claimant when she commenced employment. The claimant was employed on a temporary basis due to an increased seasonal workload.

During November 2006 the claimant told the General Manager that she was pregnant. He congratulated her. The claimant was quite ill due to her pregnancy and the General Manager

reassigned her to other more suitable duties. During November 2006 the claimant was absent on sick leave for a number of days but the company paid her for these days. The claimant did not telephone the General Manager or anyone else in the respondent company to inform them she would not be present for work. The General Manager was not concerned about this, as he knew of the claimant's condition. The claimant continued to intermittently miss days of work.

The claimant was then absent from the 6 December 2006 to the 12 December 2006. On the 12 December 2006 the claimant told the General Manager that she was unable to continue working. He paid her any monies owing.

During cross-examination the General Manager stated that he did not carry out a risk assessment when the claimant told him she was pregnant but he did reassign her to lighter duties. The General Manager did not receive medical certificates from the claimant for any of her absences.

It was put to the General Manager that the claimant had telephoned into work and asked an office employee to tell the General Manager that she would not be at work, as she was ill. The General Manager replied that the office employees are aware of the procedure whereby all telephone calls concerning absences from work are transferred to him.

Claimant's Case:

Giving evidence the claimant stated that the General Manager had not informed her in October 2006 that her employment was temporary and that it would end in December 2006. The claimant continued in her employment until the 22 November 2006. After this time the claimant had to leave work early a number of days due to illness. The claimant attended a doctor on the 27 November 2006 and was told she was pregnant. The claimant told the General Manager that she was pregnant. The General Manager transferred her to lighter duties.

The claimant was absent on the 4 December 2006 but she telephoned the office that morning and spoke to an office employee. The claimant told the office employee that she had been at the hospital over the weekend with pregnancy associated problems and that she would be absent for a number of days. The claimant asked for this to be communicated to the General Manager. When the claimant returned to work she spoke to the General Manager and apologised for her absence.

The claimant was ill subsequently and again she telephoned the office and asked them to inform the General Manager. The claimant attended her doctor who advised her not to work for a few days. The claimant telephoned the office and asked for this to be communicated to the General Manager.

When the claimant spoke to the General Manager on the 12 December 2006 she told him she was unable to work at that time but she enquired if he would have work for her in January 2007. The General Manager told the claimant he did not have any work for her and gave her a P-45.

During cross-examination the claimant stated that each time she had telephoned the office she had done so after 8am. It was put to the claimant that from 8am to 8.45am the General Manager answers the telephone.

Answering questions from the Tribunal the claimant stated that when she visited the General Manager on the 12 December 2006 her purpose was to be upfront with him and to tell him that she was temporarily unable to work but she did want to return to work in January 2007.

Determination:

The Tribunal considered the evidence of both parties and in particular the evidence surrounding the conversation of the 12 December 2006. The Tribunal noted that the claimant did not provide the respondent with medical certificates regarding her absences. The Tribunal also noted that the General Manager reassigned the claimant to lighter duties when told of her pregnancy. The Tribunal finds that the claimant was not dismissed by reason of pregnancy and as the claimant does not have the requisite service under the Unfair Dismissals Acts, 1977 to 2001, the claim must fail for want of jurisdiction.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)