

## EMPLOYMENT APPEALS TRIBUNAL

Claim of:  
Employee

Case No.  
UD261/2008

against  
Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan  
Members: Mr. G. McAuliffe  
Mr. A. Butler

heard this claim at Carlow on 15th July 2008

#### **Representation:**

Claimant: In person

Respondent: Mr. Tom Mallon B.L. instructed by Ms Aoife Henry, Mason Hayes & Curran,  
Solicitors, South Bank House, Barrow Street, Dublin 4

#### **The determination of the Tribunal was as follows:**

##### **Preliminary Issue:**

##### Respondent's Case:

The claimant was employed with the respondent as a sales advisor from October 2007 to December 2007. The respondent sells seven brands of ladies fashion.

The respondent's Employee Relations Manager gave evidence that 22,000 of the respondent's 25,000 employees are female. Many staff work on a part-time basis. The respondent is a family focused business and maternity leave is a common occurrence.

The claimant worked at one of the respondent's concessions in the South East. The manager of the concession gave evidence that the store has a number of employees working varying hours. In the approach to the Christmas period temporary staff are employed in September and October for twelve weeks. The respondent employs temporary staff for twelve weeks only as after this time an employee is considered permanent. To allow for this the respondent usually employs two temporary staff on different dates to cover both the busy Christmas period and the January sales. The claimant was employed from the 1 October 2007 for twelve weeks on a temporary basis. Another employee was employed from the 1 December 2007 to February 2008 on a temporary basis.

The claimant was not given a contract when she commenced employment. The Tribunal heard this matter was dealt with elsewhere. The manager told the claimant on the 1 October 2007 that she was commencing employment as a temporary employee. The manager did not tell the claimant that it was a twelve-week probationary period.

On the 1 October 2007 the manager and the claimant met in the office and the manager inputted information on the computer system. The information inputted included details of the claimant's hourly rate of pay, the hours she was employed for and that the nature of her employment was temporary. A printout from the computer system was submitted to the Tribunal.

During October 2007 the manager generated a document entitled Christmas Temporary Employee Details. Copies of this document were submitted to the Tribunal. The claimant completed this document and her manager signed and dated the document on the 23 October 2007. The manager was unaware the claimant was pregnant when the form was completed. The manager later inserted a note on this document that stated "*For 12 weeks*" sometime after the claimant told her she was pregnant.

When the manager became aware the claimant was pregnant she informed the area manager and human resources as a matter of course. They advised the manager that the claimant should not lift heavy loads. Otherwise the claimant's work remained unaltered and her hours were not reduced.

The claimant asked the manager if her contract could be extended to February 2008. The manager enquired about this on behalf of the claimant but it was not possible for the claimant's contract to be extended due to the respondent's twelve-week rule.

During cross-examination the manager confirmed that the claimant was sick for one week of her employment. When the manager received a medical certificate it stated the claimant had a "pregnancy related back problem" and the manager kept the claimant at 20 hours per week from then on instead of the 25 hours the claimant sometimes worked.

In reply to questions from the Tribunal, the manager stated that the claimant's twelve weeks was due to end on the 24 December 2007. However, the last day the claimant worked was the 22 December 2007, as the respondent's employees who have children do not work on the 24 December 2007.

#### Claimant's Case:

The claimant was employed after a recruitment process. When she commenced employment, the manager told her that she was on a twelve-week probationary period.

The claimant informed her manager in November 2007 that she was pregnant. After she told her manager she was pregnant the manager informed her she was on a twelve-week contract. The manager immediately briefed the claimant on health and safety and went into the office to telephone the area manager and inform the area manager that the claimant was pregnant. If the claimant had known the contract was for only twelve weeks she would have sought other employment.

The claimant's hours were reduced after she told the manager she was pregnant and she was

prevented from performing stock duties. The claimant accepted that she had completed the document entitled Christmas Temporary Employee Details but she was not told at the time of completing the document that it related to a period of twelve weeks.

During cross-examination the claimant accepted that when she saw the position advertised it stated the position was “temporary.” The claimant understood her position was temporary but she did not think it would be as short as twelve weeks and she believed that her employment could have been extended to February 2008.

**Determination on Preliminary Issue:**

The claimant was employed on a short term contract for 12 weeks. The tribunal is satisfied that the employee completed, and signed, a document headed “Christmas Temporary Employee Details” which was clearly a short term contract.

The tribunal does not have jurisdiction to hear a case unless the employee has one year’s continuous service or comes within one of the exceptions to this requirement.

Section 2 ( 1 ) (a) of the Unfair Dismissal Acts, 1977-2007 (The Act) provides that the Act does not apply to “an employee (other than a person referred to in Section 4 of this Act) who is dismissed, who, at the date of his dismissal, had less than one years continuous service with the employer who dismissed him and whose dismissal does not result wholly or mainly from the matters referred to in Section 6(2) (f) of this Act”.

In order for the tribunal to have jurisdiction to hear this case the claimant would have to establish that her claim came within the exceptions to the requirement for one year’s continuous service as set out in section 6(2) (f) of the Act and that she was dismissed by reason of “her pregnancy or matters connected therewith”.

Having heard the evidence the Tribunal determines that the claimant was not dismissed by reason of her pregnancy. Accordingly it does not have jurisdiction to hear the claim.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)