

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD1157/2007

against

Employer

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B L

Members: Mr. F. Moloney
Ms. M. Mulcahy

heard this claim at Dublin on 18th April 2008 and 24th June 2008

Representation:

Claimant: In person

Respondent: Mr Stephen O'Sullivan, B.L., instructed by Beauchamps, Solicitors,
Riverside Two, Sir John Rogerson's Quay, Dublin 2

The determination of the Tribunal was as follows:

Respondent's case:

The Group Operations Director (JT) gave evidence that the Clarion Hotel Group took over management of the hotel in which the Claimant worked, plus some other hotels. As a result of this, redundancies took place. They were concerned at labour costs so they decided to combine the management of the hotel with one other in order to reduce costs, and it was coupled with the Dublin Airport Hotel. He said that the Claimant had more experience than they needed for the Comfort Inn alone, and that she was too expensive. They needed an individual who could deal with a much larger business, and who could manage a team of managers. AO'N had the greater relevant experience so he was chosen for the job ahead of the Claimant. He denied that this decision was in any way related to the Claimant's pregnancy. Key performance indicators were chosen as the basis for choosing the best candidate for the job.

The Group Head of HR Clarion Hotels (TO'N) gave evidence that there was a plan to have two properties, including the Comfort Inn, managed by one person. It was her idea to set up a ratings process for the two candidates for the job, the claimant and AO'N. Each candidate for the new position was appraised by their senior manager, PB rated the claimant, and JT rated AO'N. They were rated with reference to their CV's, relevant experience, and abilities. The claimant was unable to attend a meeting with her, so she tried to contact her, but couldn't. Eventually she met her on 24 August 2007 to advise her about the restructuring. She said that she was aware of the claimant's pregnancy at this stage.

She said that the claimant had not been paid redundancy, but was paid for holidays and notice. She vehemently denied that the claimant was not considered for the job because of her pregnancy. It was stressed to her that if she didn't hear from her by 31 August 2007, she would be made redundant, and she didn't respond. She agreed that the claimant did not accept that it was a redundancy situation. As a result of the re-organisation two employees were made redundant including the claimant. The fact that AO'N had the greater experience of running a larger hotel was a significant factor in him getting the position, and not the claimant.

She said that a consultant was looking after the Comfort Inn now. She denied that she had harassed the claimant, but was simply trying to contact her to discuss issues not resolved at the meeting on 24 August 2007, and to come to an amicable agreement regarding her redundancy entitlements. The decision was made to cut costs by putting in one manager of two hotels, so the claimant's job became redundant as a result. She said that the Clarion Hotel group no longer owns the Comfort Inn.

The group operations manager in his evidence told the Tribunal that he recruited the claimant to work as general manager in November 2003. In 2004 and 2005 the respondent was happy with the claimant and her performance was steady. They were also happy with the way the hotel turned around during this period. In 2006 the claimant was on maternity leave. On 17th February 2006 the claimant was issued with a "Cause for Concern" letter which outlined a list of issues and stated that the hotel rated lower than average. Witness has only ever sent five letters of this type and he was hoping for the claimant's acceptance of it in the manner in which it was intended, i.e. to motivate a better performance and to bring the hotel up to the required standard. Letter dated 5th September 2007 from the claimant's representative was referred to where it was stated that she was informed that following her maternity leave in March 2007 she would be returning as resident manager instead of general manager, however witness stated that a possible demotion was never discussed with her. The claimant also requested a reduced working week but the respondent was unable to accommodate her request.

Witness had a good working relationship with the claimant and as soon as he realised that her job might be jeopardy he met with her on 13th August 2007. A score card with results under three headings i.e. relevant experience, education/qualification and competencies was used to mark the claimant and a colleague. The rating under the heading competencies was based on results over four years. The claimant's pregnancy did not influence the decision to make her redundant. The results of this score card was presented to the Tribunal. In relation to the "cause for concern" letter witness said that when he looked at the performance of the hotel in the November/January period, there appeared to be a problem with sales. It was compared to their sister hotel in Limerick. A high occupancy would be expected in Dublin in first two weeks of July.

Claimant's case:

The claimant in her evidence to the Tribunal said that as of the second day of this hearing she had not worked since the date of her redundancy. Her baby was born in December 2007. She was made redundant on 31st August 2007 and her employment ended on 30th November 2007. She was paid in lieu of notice. She had health problems in relation to her pregnancy and had to take her maternity benefit from 1st September to end February 2008. Normally she would work up to two weeks before the baby was born therefore would finish up in early December. She had to wait nine weeks for her final pay and still has not received her redundancy to date.

She commenced her employment as a general manager at the respondent's hotel in Parnell Square on 3rd November 2003. Having suffered a burst appendix in April 2006 she was absent from work for three months and she worked on a part-time basis on her return. During this time the respondent was supportive. In mid 2005 a discussion took place where it was mentioned that a new hotel which was due to open in Granby Row in early 2007 and it was envisaged that she would manage both hotels. As in previous years, in January 2006 she received an increase in salary plus a bonus. On 20th January 2006 she announced her pregnancy and on 17th February 2006 she received the "cause for concern" letter. She was shocked by the tone of this letter. She responded by letter which was followed by a meeting where she told the respondent she felt the atmosphere has changed towards her. The group operations manager was now in contact with her on a more frequent basis and he made a comment that he was under pressure because of the claimant and made a comment, "if its not you it will be me".

In April 2006 the claimant was suffering from blood pressure problems associated with her pregnancy. The work environment became very hostile. She received 50% of her pay during her maternity leave but subsequently discovered that according to the hotel's group packages she should have received full pay less the maternity benefit. She started her maternity leave on 30th June 2006. She requested a meeting with the group operations manager in October 2006 where she proposed returning to work on reduced hours. Initially he was in favour of her request but a short time later she was told the respondent could not accede to her request. On 27th February 2007 she was told she was coming back to work as a resident manager which she was not happy about. She also questioned another position for which she was not given the opportunity to apply and the person who was appointed to the post had been with the respondent only six months. The next morning she received a telephone call stating that there would not be any changes on her return to work on 5th March 2007. After she returned to work she requested a pay and bonus review and was told that all she could hope for was a 4% inflation increase. The atmosphere at work was difficult for a number of reasons among them a comment on how she was able to keep working with a young baby and should she not be at home looking after him.

While on a family holiday in Spain she received a telephone call on 25th May 2007, from the chief operating officer stating that an offer had been accepted on the sale of all the hotels in the group except for Killarney and Parnell Square. She was assured that everything would remain the same except for her getting a new boss. In mid July 2007 she told the respondent of her pregnancy and at a meeting in early August she was asked if she was sure she wanted to announce her pregnancy, which she thought was an odd remark. On 10th August the group operations manager told her that the Clarion team who would be the new proprietors planned to have one general manager and one operations manager and that she would be given the opportunity to apply for the general manager position but either way she would be offered the operations manager post on reduced terms. On 24th August while she was out on sick leave she met with two people, one being the Clarion

roup controller. She was told she was being made redundant as a cost saving exercise. While she was shocked she challenged the decision and wondered why she had not been considered for the group manager's position. A comment was passed as to how the claimant could fill this role since she was due to go on maternity leave. The claimant felt she was being victimised because of her pregnancy. She was asked to a meeting the following week to finalise her redundancy and to sign the relevant forms. The claimant said she would seek legal advice as she felt this decision was taken because of her pregnancy. She did not respond to calls, text messages or emails as she was too upset. The claimant had blood pressure problems and was advised to rest for the sake of her health and that of her unborn baby.

Determination:

Having listened to all the evidence the claimant has not made out her case that she was unfairly dismissed by reason of her pregnancy. A genuine redundancy existed as evidenced by the re-structuring and the fact that some senior members of staff were made redundant. The claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

