

## **EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM OF:**

**CASE NO.**

Employee

UD699/2007

**Against**

Employer

**under**

### **UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K. T O'Mahony B.L.

Members: Ms. M. Sweeney  
Mr. J. McDonnell

heard this claim at Cork on 14<sup>th</sup> February and 18th April 2008.

#### **Representation:**

Claimant : Mr. Pawel Janaczek, Executive Officer, Independent Workers Union,  
55 North Main Street, Cork.

Respondent : XXXX

The determination of the Tribunal was as follows:-

#### **Preliminary Issue.**

The respondent contended that the Tribunal did not have jurisdiction to hear the claim under the Unfair Dismissal Acts because the claimant did not have one year's continuous service at the time of her dismissal. The claimant contended that the Tribunal had jurisdiction to hear the case because she was dismissed on grounds of her pregnancy and in such circumstances there is no requirement to have one year's continuous service at the time of dismissal.

#### **Summary of the Evidence**

The claimant worked for the respondent from 3 January 2006 to 5 May 2006 when she voluntarily resigned to go to South Africa. Things did not work out for the claimant in South Africa and she returned to Ireland. The respondent re-employed her from 31 May 2006 to 19 April 2007, when she was dismissed. The claimant worked as tea lady and cleaner.

Employees in the respondent company have 21 days annual leave: 18 eighteen days are pre-set by agreement with the union and the remaining three are floating days to be taken with prior notice to the respondent. The pre-set days include 10 days in summer, 5 at Christmas, the day after New Year's Day, Good Friday and the Tuesday after Easter Monday. The pre-set dates are posted up in the respondent's premises in early January each year and accordingly all employees are aware of them. Of the respondent's 190 employees around 120 come from other European countries and over half these take their 3 floating days Easter week, thus having 10 days holidays at Easter, which includes two weekends and all of Easter week.

On 15 February 2007 the claimant informed the respondent that she was pregnant. On 12 March 2007, the claimant, through a friend, booked a return flight for a visit to Poland, departing on Monday 2 April and returning on Monday 16 April. Later that day she met the respondent's Commercial Director and another director who is personal assistant to the Managing Director (PA) and told them that she had done something wrong, that she had booked the airline tickets without having sought permission to take the extra days leave and she asked for the extra time off. She told them that she had health problems and wanted to see her doctor in Poland because she previously had a miscarriage. The Commercial Director told her he would speak to the Managing Director (MD) about it and advised the claimant not to do any heavy lifting in the performance of her duties. He spoke to MD on 13 March and he was concerned that granting the additional leave could establish a precedent. Later that day, the Commercial Director informed the claimant that the respondent would allow her leave from Thursday, 6 April, and that she was to return to work on Monday, 16 April. He instructed her to change her ticket accordingly. On 13 March the Commercial Director offered the claimant the facility of seeing the company doctor.

The Commercial Director and PA vehemently denied the claimant's allegation that they had instructed her not to continue with her pregnancy. PA had been involved in the claimant's private life. Because of the claimant's financial difficulties when she arrived in Ireland PA had given her work cleaning her apartment so she could earn some extra money. PA helped the claimant to do the pregnancy test and told her that she would help her in whatever course of action she took in relation to her pregnancy.

It was the claimant's evidence that between 12 March and 30 March she had high blood pressure and felt unwell. On 29 March she had a busy day at work because new furniture was delivered to the respondent's premises and she felt tired and weak. Immediately after work, she went to the doctor and was certified to be absent from work, due to pregnancy problems, from 30 March to 5 April. The medical certificate is dated 30 March 2007. On 30 March, on the claimant's instructions, her friend changed her return ticket from 16 April to 13 April but the ticket for her outward flight was not changed. The respondent felt that the claimant had made no attempt to change her tickets between 13 March and 30 March. The directors felt that the doctor's certificate covering the claimant's absence from work until 5 April was a convenience and that anyone with pregnancy related problems would not be travelling to Poland in particular when she was having her scans in Ireland. The claimant gave various reasons for her failure to change the date of her outward flight: she had tried to sell her tickets; while her friend had changed the return date she had refused to change the date for the outward flight; she did not have sufficient time to change it; she had difficulty trying to purchase an outward flight ticket; while her

boyfriend who also worked for the respondent and had previously booked flight tickets she did not ask him to purchase a ticket for a later outward flight because she wanted to do it on her own; and finally, in reply to a member of the Tribunal the claimant said that she had not asked her friend to change her outward ticket. While in Poland she visited her gynaecologist.

On Monday 2 April the Commercial Director heard on the factory floor that the claimant had gone to Poland. Her boyfriend confirmed this to him. The respondent could not contact the claimant through her mobile phone.

The claimant was due back to work on Monday 16 April and also had an appointment to have a scan on that day. She could not recall when she had received notification of the appointment and admitted that she had received the notification before she went to Poland in April. She had not given the respondent any prior notification of the appointment because she did not think it necessary. When she reported for work on the morning of 16 April she informed the respondent about her appointment and the payroll officer instructed her to come to work after her appointment and to bring her appointment card. When she arrived for work at 3.00pm the Commercial Director told her that she was suspended with pay for three days until MD's return to the office and was advised that she should be available for a meeting with the respondent. On Tuesday PA called the claimant to tell her she would collect for a meeting with the respondent but the claimant refused to attend the meeting because she could not bring her own representative. The respondent is a unionised company and would provide a representative for her but she still refused to attend the meeting.

On 18 April, following several telephone calls the claimant reluctantly attended a disciplinary meeting. The respondent questioned her about her visit to the doctor prior to going to Poland. Management felt that the doctor's certificate was a convenience. There was no outcome to the meeting. On Thursday morning 19 April the claimant returned to work because her three-day suspension had expired. When PA saw the claimant carrying a bucket of water and washing the floor she instructed her to stop working. The claimant became aggressive, loud, and insulting. PA could not cope and she asked one of the other directors to intervene. That director took the claimant to the boardroom to calm her down. It was PA's evidence that she instructed the claimant to stop working because she (the claimant) might slip on the wet floor.

A further meeting was held on afternoon of 19 April. At this meeting MD dismissed the claimant because she had taken extra leave without permission and had failed, contrary to express instructions, to change the date of her outward flight. The respondent said that this created a dangerous precedent in a company with about 120 employees from eastern European countries, many of whom would appreciate a long holiday in their homeland at Easter. Furthermore MD felt that the claimant had used the doctor to get a sick note to cover the additional days she needed. There was not a translator present at this meeting. The claimant felt that she had been dismissed because she was pregnant.

An employee, who holds a senior management position in the respondent company, told the Tribunal that the respondent had no problem with her or the other three females having time off for medical appointments during their pregnancies or taking maternity leave. Every employee knows that the company policy is that employees must apply in writing in advance for time off, irrespective of the reason.

## **Determination**

In determining the preliminary issue before it the Tribunal must not consider the sufficiency of the reason for the dismissal or whether fair procedures were followed in the process leading to the dismissal. The sole question for the Tribunal is to determine what was the reason for the dismissal.

The respondent was aware of the claimant's pregnancy from around 15 February 2007. There was no evidence before the Tribunal that her pregnancy caused a problem for the respondent. The Managing Director's Personal Assistant was concerned for the claimant and gave her personal assistance. While she discussed the claimant's situation with her the Tribunal does not accept the claimant's allegations that either she or any member of management suggested that she should not go ahead with the pregnancy. Other employees of the respondent who had pregnancies were allowed their statutory entitlements to attend for their medical appointments as well as maternity leave.

The Tribunal is satisfied that the claimant was dismissed because she booked a holiday which required her taking additional leave and failed, contrary to an instruction from the respondent, to change the date of her outward flight.

The claimant voluntarily resigned from her first period of employment with the respondent on 5 May 2006. A voluntary resignation breaks continuity of employment and her first period of employment cannot be added to her later period of employment with the respondent. The claimant's second period of employment with the respondent was from 31 May 2006 to 19 April 2007, which falls short of one year's continuous service as required by section 2 (1) of the Unfair Dismissals Act 1977. Accordingly, the Tribunal does not have jurisdiction to hear the claim under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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