

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

CASE NO.

UD986/2007

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr. C. Ormond
Ms. M. Finnerty

heard this claim at Dublin on 29th February 2008 and 18th July 2008

Representation:

Claimant: In person

Respondent: Mr. Breffni Gordon BL instructed by:
Mr. Karl Carney, Thomas Honan & Co., Solicitors
Ferrybank, Arklow, Co. Wicklow

The determination of the Tribunal was as follows:

A preliminary issue arose as the claimant did not have a full year's service, as required, to bring a claim under the Unfair Dismissals Acts. The claimant contended that her dismissal was due to her pregnancy.

Respondent's Case:

Giving evidence on behalf the respondent company a Company Director (CD) denied that the claimant was dismissed due to her pregnancy, but rather her dismissal was due to her performance as manager of one of the company's pharmacies. CD became aware of the claimant's pregnancy sometime around early May 2007 and was happy for her. The claimant had initially been employed on a six-month contract in the role of manager with responsibility for the retail side of the pharmacy. In January 2007 CD wrote to the claimant offering a further six-month probationary contract. In the letter CD outlined targets that the claimant was required to meet in order secure a permanent position, which included increasing the pharmacy's cash sales to an average of €2,500.00 per day. The letter also outlined a number of performance issues in relation to the claimant, namely:

- Being late for work on occasion and thus setting a bad example to other staff
- Not complying with the procedure in place for applying for leave

- Un-notified absences
- Staffing levels too low due to staff absence and lateness
- Problems with the staff rota
- Cash receipts not being filed to HQ to according to procedure, causing problems for the accountant
- The level of front of shop sales
- The cleanliness of the shop area

Along with the increased sales target, the claimant was also expected to ensure the shop was clean, arrive on time, ensure that staff members were also punctual, maintain a predictable rota and no un-notified absences. In evidence CD also claimed that staff turnover was very high at the pharmacy and there were stock problems in the retail part of shop. The respondent refuted that there was extra work at the dispensing area of the pharmacy, which took staff away from the retail area. Works being carried out upstairs caused no inconvenience or extra dirt in the shop as a section of the pharmacy was partitioned off from floor to ceiling.

When CD met the claimant on 28th May 2007 at a coffee shop near the pharmacy, they discussed the difficulties at the pharmacy and CD told her that she was unable to continue employing her. CD offered the claimant a 'face saving' option whereby CD would say to other staff that she had gone home with a headache and was leaving the job as she wanted to spend more time at home.

On the **second** day of the hearing an employee of the respondent's located in the Naas branch gave evidence. She explained that she was, at present, on maternity leave from work. When she had informed her employer (owner and respondent's 1st witness) of her pregnancy she was delighted for the witness and also told to take regular breaks during her working day. There had been no problem with reducing her hours during her pregnancy.

When asked by the Tribunal the witness explained that her weekly hours had reduced from 40 to 12 hours.

A second former employee from the Naas branch gave evidence. She also stated that she had been pregnant while employed with the respondent and had no problems with her employer. In fact her employer had been very encouraging.

A third employee employed as an Accounts Manager gave evidence. She explained part of her role was to keep in daily contact with all branch Managers, including the claimant. There were some problems with the claimant. She was often delayed in ringing in the daily sales totals and annual leave records for a certain period were not forwarded to the witness by the claimant.

On cross-examination and when put to the witness that the claimant was often on her own in the shop and could not fax the cash sheets, she replied that it company procedure to fax it in the morning. She also stated that she could not remember if the claimant told her she had been in the shop on her own at the time. The witness also stated that a breakdown of sales had also not been submitted.

A fourth employee gave evidence. She explained she had worked in the same premises as the claimant and found that the shop very untidy and the canteen filthy. There were layers of dust on some of the products on sale, stock had not been ordered, staff were not trained properly and so she informed the owner.

On cross-examination the witness stated that the claimant spent most of her time in the office.

Claimant's Case:

The claimant gave evidence. She commenced employment with the respondent in June 2006 and was never given a contract of employment.

In early 2007 she became pregnant and informed the owner in April 2007. On 28 May 2007 she arrived for work. The owner was present, asked her to go for a coffee and informed her she was to be let go. She had never received any written or verbal warnings that it states in the disciplinary and dismissal procedures in the staff handbook. When she asked what the reason was, she was informed that sales were down. She was so upset and shocked she went home. The claimant told the Tribunal that she felt she had been dismissed because of her pregnancy as she had only informed the owner a few weeks previous. She explained to the Tribunal that she had been pregnant while working in her previous employment in a pharmacy and had no problems.

The claimant gave evidence of loss.

On cross-examination she gave evidence of her previous employment and the fact that she had informed her employer (owner) of the problems she had had with her previous employer. When put to her, she replied that the owner had not raised the issue of any problems with her or the running of the shop, even though they had met on a weekly basis. When asked why she thought she was dismissed because of her pregnancy, she replied that it all happened "in a timeframe".

When the issues in the letter of January 2007 to extend her probationary period were put to her, she replied that she felt she had improved greatly. The claimant contended that the turnover of staff was not due to her and there were other factors which explained it. Four pharmacists left due to no technician being hired and the extra work because of new nursing homes being taken on. The lack of a technician meant floor staff having to help at pharmacy. The claimant stated that some holidays applied for retrospectively and were for time in lieu, but that she applied for the rest in the correct manner. Regarding the cleanliness of the shop, the claimant stated that the shop was under refit, which caused extra dirt.

Determination:

The Tribunal have carefully considered all the evidence adduced by both parties over the two days of the hearing. The onus of proof is on the claimant to prove that the reason for her dismissal was pregnancy. However, the Tribunal finds that she was unable to sufficiently prove her case. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)