

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD456/2008

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Flanagan BL

Members: Mr R Prole
Mr J Moore

heard this claim at Dublin on 11th September 2008

Representation:

Claimant: Ms Tara Matthews of Oliver Matthews & Company, Solicitors,
Quayside Business Park, Mill Street, Dundalk, Co. Louth

Respondent: Mr Tiernan Lowey BL, instructed by Ms Denise Fanning of DAS Group,
12 Duke Lane, Dublin 2

The determination of the Tribunal was as follows:

Respondent's Case

The fact of dismissal was not in dispute. The first witness for the respondent was its financial controller. The financial controller gave evidence that since October 2007 there had been a sharp decline in sales. The respondent firm had envisaged year on year growth, but this year targets were not met. The financial controller said that when sales dip overheads must dip too. The auditors had come into the respondent firm and they had advised immediate corrective action due to the alarming drop in turnover.

The claimant had been recruited in August 2007 to replace an employee who had left to further her career. The respondent had intended to keep the claimant on as an employee. The financial controller knew from some time in mid to late November that the claimant had become pregnant. The financial controller stated that the claimant was not let go because of her pregnant. She was made redundant because of the reality of the economic situation. The claimant was the first person in the history of the company to be let go. The financial controller stated that a long-standing

member of staff was returning from maternity leave and that there was not enough work for both in the office.

The office manager then gave evidence as the second witness for the respondent. She stated that there had been a significant dip in sales from October 2007. There had a high degree of uncertainty in relation to the future. The number of orders, which the respondent had, did not justify the number of staff employed. The office manager stated that she had no difficulties with the respondent when she was pregnant. The office manager further stated that after her maternity leave ended she returned to her old job.

Claimant's Case

The Claimant gave evidence. The respondent had recruited her through an agency to a full time and permanent position. Neither the agency nor the respondent mentioned probation. The respondent had a review by the financial manager at some time towards the end of October 2007. The financial manager had said that he hoped to expand her role and he also said that he would give her a pay rise in January.

On 28th November 2007 she told the financial manager that she was pregnant. On that day the financial manager was fine about the pregnancy and had said that he had appreciated the early notice. Then on 14th December 2007 the financial manager had telephoned her and had asked her to come into the office. The claimant was told that she was being let go. She was given a weeks notice. The financial manager went through some things on the desk and then told her to go. He did not mention the economic downturn. The claimant had known nothing of the economic position of the respondent until she received the letter stating that her employment was being terminated. The claimant then gave evidence establishing loss.

Determination

The Tribunal has carefully considered the evidence adduced. The Tribunal accepts that there was a downturn in the respondent's business and that a redundancy situation came into existence when the staff member on maternity leave returned to work. The Tribunal finds that in making the claimant redundant five weeks before her colleague returned to work the respondent acted prematurely. Accordingly the Tribunal finds that the claimant was unfairly dismissed and awards a sum of €2 400.00 in compensation for loss. The claim under the Unfair Dismissals Acts 1977 to 2001 succeeds.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)