

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE - *appellant*

P4/2010

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER - *respondent*

under

MATERNITY PROTECTION ACT 1994 AND 2004

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this appeal at Letterkenny on 24th November 2011

Representation:

Appellant: In person

Respondent: Employee in person

This case came before the Tribunal by way of an employer (*appellant*) appealing against the Decision of the Rights Commissioner ref: (r-081907-mp-09)

The decision of the Tribunal was as follows:

Respondent's case

The respondent (employee) gave evidence she was employed as a house assistant, cleaning rooms and other parts of the hotel. She commenced maternity leave on the 15th April 2008 and was due to return to work on the 14th October 2008. Around September 2008 she contacted the accounts section and was told to call in to the hotel and speak to the manager about returning to work. She went to the hotel and the manager was not there, the receptionist on duty (B) told her that she would inform the manager that she wished to return to work and that someone would be in touch with her. No one contacted her so she called to the hotel a number of times seeking her position back. She then decided to take the additional unpaid maternity leave of 8 weeks. She contacted accounts and was told she did not need to apply for this additional leave in writing.

Before the end of this additional leave she called to the hotel again seeking her position, they told her it was very quiet and suggested that maybe she could work in the kitchen, she agreed to this. No one contacted her after this so she continued to call to the hotel seeking work. On the 6th October 2009 she spoke with a director who informed her that there was no housekeeping work available but she could give her a few hours in the kitchen. However it would be better for her to claim social welfare.

Before her maternity leave her normal working hours ranged from 20 to 60 hours a week depending

on business. She was not informed that she had to inform her employer in writing of her intention to return to work.

Appellant’s case

A director gave evidence on behalf of the appellant. She explained that there were regular monthly meetings held in the hotel and she would have been informed of these if the respondent was calling into the hotel as often as she said she was. The respondent last worked for them in December 2007 and then sent in sick certs up to the commencement of her maternity leave. Any forms or correspondence would be dealt with by their accounts; nothing was received in writing from the respondent stating her intention of returning to work.

The bedrooms in the hotel were closed for the first six months of 2009, so B would have told the respondent that there were no positions available in accommodation. The respondent had declined a position in the kitchen. At the meeting she had with the respondent on the 6th October 2009 the respondent had again declined a job in the kitchen as she thought there would be an atmosphere if she returned. B was not in attendance at the hearing however she had confirmed with the director that she had met with the respondent twice over the period of her maternity leave.

Determination

The Tribunal carefully considered the evidence adduced at the hearing. Whilst they are sympathetic to the respondent’s situation they are bound by the law. Section 28(1) of the Maternity Protection Act, 1994 as amended by the Maternity Protection Amendment Act 2004 states:

“28.—(1) Entitlement to return to work in accordance with section 26 or to be offered suitable alternative work under section 27 shall be subject to an employee who has been absent from work while on protective leave in accordance with this Act having, not later than four weeks before the date on which she expects to return to work, notified in writing (or caused to be so notified) the employer or, where the employee is aware of a change of ownership of the undertaking concerned, the successor, of her intention to return to work and of the date on which she expects to return to work.”

The respondent in this case did not notify or caused to notify the employer in writing, therefore the Tribunal reverse the Decision of the Rights Commissioner and the appeal is allowed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)