

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO. UD814/2008

against  
Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N O'Carroll-Kelly BL

Members: Mr W Power  
Mr P Woods

heard this claim at Dublin on 25th November 2008

Representation:

Claimant: Mr Marcin Szulc,  
Maguire McClafferty, Solicitors, 8 Ontario Terrace, Portobello Bridge, Dublin 6

Respondent: Mr Gerry Rooney,  
Polaris Human Resources, 60 Main Street, Applewood Village, Swords, Co. Dublin

The determination of the Tribunal was as follows:

Respondent's Case:

The claimant was employed on 10<sup>th</sup> September 2007 with an initial probationary period of three months. The contract stated that if the claimant was successful in her probation its cessation would be confirmed to her. The respondent company, a sole trader (ST), denied that the claimant was dismissed due to her pregnancy, but contended that it was for performance issues and specifically for the refusal to carry out an instruction. Due to ST's concerns over the claimant's performance her probation was extended in a letter written on 18<sup>th</sup> February 2008. The letter stated that ST would confirm in writing when the probationary period had ended and that ST's "main misgivings refer to your approach to work and your work ethic, as well as you not adhering to the terms of your contract or the company handbook". The claimant informed ST that she was pregnant on 3<sup>rd</sup> March 2008. The claimant was facilitated when she requested administration work in place of the more physical work she normally carried out.

ST held individual meetings with the claimant on 8<sup>th</sup> November and 28<sup>th</sup> January 2008 and group meetings on 19<sup>th</sup> November and 4<sup>th</sup> February, though the claimant and other employees requested the February meeting. Issues included: the claimant not finishing treatment notes during

he session, complaints from the claimant's supervisors about the claimant not following instructions and the completion of book reports for the claimant's training course. The claimant's pay increased in early 2008 due to her completion of a training course, as outlined in her contract, and not due to completing her probationary period. The claimant was dismissed on 30<sup>th</sup> June 2008 for refusing to sew some duvet covers that were urgently required for therapy sessions. The claimant did not suggest that her unwillingness to carry out the task was related to her pregnancy, but simply refused to do it in contravention of her contract of employment, which required the claimant to "undertake any such administrative and support and duties that may be required".

Claimant's Case:

The claimant considered that the meetings in November with ST were routine and were held with other employees. The claimant had only received good comments from clients and other staff and had not been told to improve nor had she received any warnings. At the meeting with ST in January they discussed the claimant having completed her course, receiving a pay rise in February and practising psychology, even though her credentials were not recognised in this country. The claimant and other trainees called a meeting with ST on 4<sup>th</sup> February to discuss the extra duties, their salary payment and the claimant wanted to query the non-payment of a day's sick leave. The claimant believed this meeting was the reason that her probation was extended. At no point was the claimant informed that her probation was over.

After a problem with her pregnancy, at the beginning of June, the claimant requested duties that did not involve lifting or bending, which was facilitated. On Friday 13<sup>th</sup> June the claimant was asked to sew duvet covers with another employee. The claimant had never sewed before and when ST's mother arrived to show them how to sew she asked the claimant if wanted to learn how, the claimant said she didn't, so ST's mother told her she didn't have to stay. The claimant denied refusing to sew and believed her dismissal was due to her pregnancy.

Determination:

The Tribunal is satisfied that the claimant commenced employment on 10<sup>th</sup> September 2007, and under clause 1 of her contract was required to work a three-month probationary period. The respondent invoked their right, under that clause, to extend the probationary period due to their concerns in relation to the claimant's work related performance. The Tribunal is satisfied that no notice of termination of the probationary period was given, and therefore, the claimant was still working under the probationary period on the date of dismissal and therefore she cannot claim under the Unfair Dismissals Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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