

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE -**appellant**

UD350/2008

against the recommendation of the Rights Commissioner **r-056546-ud-07/SR**
in the case of:

EMPLOYER -**respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. Gilvarry
Members: Mr. D. Morrison
Mr M. McGarry

heard this appeal at Castlebar on 17 June
and 25 September 2009

Representation:

Appellant:

Mr Pat O' Donoghue B L, Migrant Rights Centre,
55 Parnell Square W, Dublin 1

Respondent:

Kevin Bourke, Kevin M Bourke Solicitors, Burke House,
Ellison Street, Castlebar, Co Mayo

This appeal arose as a result of an employee (the appellant) appealing against a recommendation of a Rights Commissioner r-056546-ud-07/SR in the case of an employer (the respondent) under the Unfair Dismissals Acts

The determination of the Tribunal was as follows:

Dismissal being in dispute it fell to the appellant to prove the fact of dismissal

The appellant, who is Lithuanian, was employed from 4 May 2006 to clean and prepare vegetables. There was no written contract of employment. The respondent had around 30 employees during the claimant's employment and fifteen or twenty of these were non-nationals. The expectations of these workers in the summer months of 2006 to take long holidays had caused a problem for the respondent as this clashed with a busy time of year for their business. In January 2007 the respondent endeavoured to implement a policy to prevent these problems recurring. The appellant's position is that such holidays were not to be allowed in June July or August. The respondent's

position is that holidays were to be staggered between employees. At around the same time as this policy was implemented the appellant booked return flights to Lithuania for both herself and her husband with a departure date of 7 July 2007.

The appellant's position is that as early as 18 January 2007 she approached the managing director's wife (DW) with a request for time off in the summer to go to Lithuania for medical reasons. On 10 April 2007 the appellant discovered that she was pregnant and told MD and DW at once. Her position is further that from then the respondent's attitude towards her changed. The claimant had decided that she wanted at least some of her pre-natal care in Lithuania and that she had discussed this with both MD and DW but the exact dates were not discussed until some two weeks before her departure for Lithuania when she had said that she would be away for five or six weeks. In the event the appellant was away for some six weeks and returned to Ireland on 22 August 2007. Approximately a week before her return she was told in a telephone conversation with her mother in law that the respondent had sent a P45 to her. The respondent's position is that the appellant told them that she was returning home to have her baby in Lithuania and that the P45 was issued because they had no knowledge that the appellant had bought return tickets and intended to return to work for them. The appellant was replaced within a few days of her leaving for Lithuania.

Following her return from Lithuania the appellant contacted the respondent and called to see MD with an interpreter but, as MD would not talk to the appellant through an interpreter, having been able to communicate effectively with her in English throughout the employment, nothing came of this meeting. A representative from the organisation representing the appellant at the Tribunal contacted the respondent and resulting from this contact the appellant was offered reengagement with loss of continuity but other wise on the same terms as previously.

Determination

Having considered the evidence adduced the Tribunal is satisfied that there was a misunderstanding and that the employer genuinely thought that the appellant had left the employment and therefore issued a P45. The respondent's offer to re-engage the appellant was rejected and therefore the Tribunal finds that the appellant was not dismissed and a claim under the Unfair Dismissals Acts, 1977 to 2007 does not arise.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)