

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD820/2008
WT333/2008
MN755/2008

against
Employer

under
UNFAIR DISMISSALS ACTS, 1977 TO 2001
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney BL

Members: Mr G. Phelan
Ms. P. Doyle

heard this claim at Clonmel on 19th January 2009

Representation:

Claimant(s) : Mr. Andrew Gubbins BL instructed by Michael J O'N Quirk & Co,
Solicitors, Main Street, Carrick-On-Suir, Co Tipperary

Respondent(s) : In Person

Claimants Case

The claimant gave direct evidence that she began working for XXXX on the 6 November 2006. She was employed as a kitchen porter and the respondent company took over the business at the beginning of November 2007. The owner of the new business met with all the employees at the end of October 2007 to ascertain who would be remaining on in employment and who would be leaving.

The witness informed her new employer that she wanted to remain working for her. She then went on maternity leave on the 2 November 2007 and had been absent from work for two days prior to this due to illness. Her husband had handed a medical certificate for this absence to her employer on the 1 November 2007.

The witness gave further evidence that she was due to return to work from her maternity leave on the 1 May 2008. She called to the restaurant premises on three or

four occasions prior to the 1 May 2008 and spoke to a manager of the restaurant. She was told that there was no job for her to return to and her employer was never available to meet with her. Since her dismissal the witness has sought alternative employment but has not been successful. She was not given any notice of her dismissal and did not receive her full holiday entitlements. As far as she is aware there are 11 days holidays owed to her. She does not know why the respondent believes that she quit her job and she does not wish to work for the respondent again.

Under cross examination she confirmed that she does not believe there was any misunderstanding between herself and her employer concerning her dismissal. When she called to the restaurant premises on a number of occasions prior to being due to return to work she sought her employers telephone number in order to contact her but this was never made available to her.

The second witness for the claimant was her husband. He gave evidence that he called to the restaurant premises to enquire about his wife returning to work after her maternity leave. He was told by a manager that there was no job for her in the restaurant.

Respondents Case

The first witness for the respondent denied that he had told the claimant that there was no job for her to return to in the restaurant. In reply to questioning he confirmed that he told the claimant that he would contact her employer informing her that the claimant had called to the restaurant seeking to return to work. He was not in a position to offer the claimant her job back.

The second witness for the respondent was the claimant's employer. She gave evidence that she met with all employees of XXXX prior to becoming the new owner. She recalls that the claimant did not wish to remain in employment when she took over the business. She was not aware that the claimant had gone on maternity leave and was unaware that she was still in employment with her. She wrote to the claimant on the 6 May 2008 seeking clarification as to her employment status but did not receive any reply. The witness believes that there has been confusion and misunderstanding between both parties and stated that the claimants job is still available for her to return to if she so wishes.

Under cross examination the witness confirmed that it was her understanding that the claimant did not wish to remain in employment when she took over the business. She agreed that if there had been better communication between the parties the claimant would still be in employment with her. She agreed that employees who are on maternity leave are entitled to holiday pay and accepted that she owes holiday pay to the claimant. She confirmed that she was told on the 6 August 2008 by XXXX that the claimant had been on maternity leave.

In reply to questions from the Tribunal the witness confirmed that she has provisions for maternity leave in her current contract of employment with all her employees and recognizes that the claimant had continuity of service under the transfer of undertakings regulations.

Determination

The Tribunal having considered all the evidence determines that the claimant was unfairly dismissed and the respondent, after her period of maternity leave had expired had an obligation to re-employ the claimant on the 6 May 2008. Therefore we award the claimant the sum of €8,000.00 under the Unfair Dismissals Acts 1977 to 2001. The Tribunal further awards the claimant the sum of €364.74 being the equivalent of one weeks pay under the Minimum Notice and Terms of Employment Acts 1973 to 2001.

The Tribunal also finds that the claimant is entitled to her statutory relevant holiday entitlements under the Organisation of Working Time Act, 1977 and this entitlement is protected by virtue of the provisions contained in section 22 the Maternity Protection Act 1994 as amended by the Maternity Protection (Amendment) Act 2004. The Tribunal therefore awards the claimant the sum of €729.48 being the equivalent of 10 days pay under the Organisation of Working Time Act, 1977.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)