

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD495/2008

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. E. Murray

Members: Mr. M. Forde
Mr. J. McDonnell

heard this claim in Clonmel on 7 January 2009

Representation:

Claimant(s) :
Mr. Sean Scott, Scott Ryan, Solicitors,
Willow House, Mary Street,
Clonmel, Co. Tipperary

Respondent(s) :
No legal representation

The determination of the Tribunal was as follows:-

This matter came before the Tribunal on the 7th of January 2009. The claimant claimed constructive dismissal.

The claimant gave evidence that she commenced employment with the respondent in June 2006. Initially she worked part-time only but was made full-time in September 2006. In October the claimant announced her pregnancy to her employers and believes that their attitude towards her changed from that time forward.

Her employment comprised working in a dry cleaning outlet where she would attend to the public bring in clothing, deal with any casual laundry business that came in, deal with the hat hire business that was being undertaken by the respondent and, in general, keep the shop clean and tidy. The only job that she did not do was that of clothing alterations.

She had no contract of employment or statement of terms and conditions of employment nor was there any grievance procedure given to her by her employers. She enjoyed her work and felt that she was doing a good job until the difficulties arose in October 07 when she announced her pregnancy. Her baby was due on the 19th of May 2008.

During November and December she had various conversations with the shop manager and ultimately with the managing director of the business with regard to the possibility of working fewer hours because of a downturn in business. She did not accept that there was downturn in business. There were discussions about the possibility of her working two days a week in Waterford in a new outlet that her employer was acquiring there.

On December 21st 2007 the MD spoke to her and said that he would be cutting her hours after Christmas as things were becoming quiet. She was dependant on her income and was upset by this. She said that she got a telephone call subsequently from the shop manager advising her that in fact her hours would not be cut. She was confused by this.

Ultimately in January her hours were cut from 5 to 2 days per week and there was no further discussion of her working any hours in the Waterford outlet. Subsequently she discovered that her employer had advertised for machinists, and had inserted an advertisement in Polish in a local publication.

During the months of January and February she worked the following hours; week commencing the 11th of January 8 hours, 18th of January 32 hours, 25th of January 26 hours, 1st of February 16 hours, 8th of February 16 hours, 15th of February 9 hours and the 22nd of February 8 hours. She became stressed as a result of the situation and was attending her doctor and was certified unfit for work for the next five weeks for reasons of stress-related illness.

At the end of that period she wrote to her employer advising them of the fact that she regarded herself as having been constructively dismissed because of her pregnancy.

She subsequently received a letter from the employer dated the 12th of April 2008 denying that the reduction in hours had anything to do with her pregnancy and inviting her to meet with a view to "having a chat" about her return to work. She ignored this letter. At no time was training in clothing alterations offered to her, but she would have undertaken that training had it meant retaining her full-time job.

She said that she was not offered redundancy.

On behalf of the respondent the managing director gave evidence. He agreed largely with the evidence of the claimant up to her description of events after October 2008. There was no question of her hours being reduced for reasons of pregnancy. The business employed about 20 staff who were predominately women and, at the present time, two women had become pregnant and had to be accommodated in the normal way. January and February are notoriously quiet periods in the dry cleaning industry. He was also in the process of negotiating the takeover of a dry cleaning business in Waterford. He told the claimant that her hours would be reduced after Christmas on the 21st of December 2007. He did not make any commitment to the claimant with regard to the premises in Waterford as in fact he had not committed himself to it until mid-January 2008 and, in any event, her pregnancy would have meant that she would have been unable to take up work in that start-up business from approximately May.

If the claimant had remained in employment she would have been back on full-time hours in around mid-March when business picked up again. He felt that he had treated the claimant fairly and though he understood her upset at having her hours reduced he had not dealt with her in a discriminatory fashion. He said that if he could revisit the matter he would not do things differently other than to make contact with the claimant during the period that she was certified sick in March.

Determination

The claim in this instance is one of constructive dismissal. It is recognised that the bar in constructive dismissal cases is quite high and that the level of oppression required to be present before an employee can resign from his or her position and claim that he or she was constructively dismissed, must be significant.

Having heard the evidence, the Tribunal is unanimously of the view that the claimant was not dismissed because of her pregnancy. Other than the claimant's own feelings with regard to this, there is no objective evidence whatsoever to support this contention. Most of the respondent's employees are women and there is no evidence that any discriminatory policy existed during the course of the claimant's employment. The Tribunal accepts that the reason for the reduction in hours was the diminution in business activity during the early months of 2008 and, whereas this was unfortunate from the point of view of the claimant's earning capacity, nonetheless the Tribunal finds that the respondent acted reasonably and, had the claimant been patient, she would in all likelihood have been back in full-time employment by the middle of March 2008.

In all the circumstances the Tribunal finds that it is unable to allow this claim and, consequently, the said claim under the Unfair Dismissals Acts, 1977 to 2001, is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)