

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
MN552/2008
UD617/2008
WT261/2008

Against

Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr P. Pierson
Mr P. Clarke

heard this claim at Longford on 11th November 2008

Representation:

Claimant(s) :

Ms. Esther Earley BL instructed by Ms Julie Shanley, Anthony Barry & Co, Solicitors, 1
New Street, Longford.

Respondent(s) :

Ms. Caoimhe Scolard, IBEC, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Preliminary Issue

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 was
withdrawn during the course of the hearing.

Respondents Case

The first witness gave evidence that she is the general manager for the respondent company (hereinafter known as the company). She has been employed by the company since November 2007. The company manufactures plastic components for the medical industry and the claimant was employed as a machine operative and her duties involved shift work and night duties. The witness was advised by letter in January 2008 that the claimant was pregnant and the claimant requested a change in her work duties to more regular day duties. The witness met with the claimant and a union shop steward on the 15 January 2008. The claimant's supervisor also attended the meeting. She informed the claimant that it was not possible to accede to her request but an offer of unpaid leave was made to the claimant. The claimant declined this offer and continued to work night shifts.

On the 25 January 2008 the company laid off 11 employees due to a downturn in business. The selection process for these lay-offs was on a last in first out basis and the union were aware of this position. The majority of employees who were laid off were machine operatives. A number of employees including the claimant who were laid off, requested their P45s. These employees received their holiday entitlements and were paid their minimum notice. Other employees did not request a P45 and have since returned to work for the company as the business required them.

The claimant had previously been laid off in November 2006 and did not request her P45 on that occasion. A risk assessment of the claimant's work duties was not carried out when the company was informed of her pregnancy as she was about to be laid off.

Under cross examination the witness denied that she was aware that the claimant made numerous complaints to her supervisor between October 2007 and January 2008 and was not aware that she had fainted on many occasions in this period while operating a machine. She confirmed that she only received a letter from the claimant's doctor in January 2008 informing her of the claimant's pregnancy and also requesting an adjustment to more regular hours. She denied that she received this letter in November 2007. The witness confirmed that she understood the difference between a redundancy situation and a lay off situation and was aware that the claimant would lose her maternity benefit if she was made redundant.

The witness gave further evidence that an employee who had commenced employment in August 2007, some fourteen months after the claimant, was laid off in January 2008 and re-employed by the company within two weeks and worked ad hoc hours until June 2008 when she resigned. This person was predominantly a machine operator but also did cleaning duties. The witness was not aware that the claimant had begged the production manager for part-time work to enable her retain her maternity benefit.

In reply to questions the witness confirmed that the claimant did not request her P45 from her and she did not hear the claimant requesting her P45 from the payroll operator. The witness also confirmed that no minutes exist of the meeting held with the claimant on the 15 January 2008.

The second witness gave evidence that he is employed as the production manager and has been with the company since January 2005. On the 25 January 2008 he informed each of the 11 employees individually that they were being let go. The procedure of last in first out was agreed with the union. He concurred with the evidence of the first witness regarding the re-employment of an employee who had less service than the claimant. This employee performed a dual function of machine operator and cleaning duties.

Under cross examination the witness denied that the claimant ever asked or implored him for

part-time work. He was aware that the employee with less service than the claimant was re-employed within two weeks. He was working for the company when the claimant was previously laid off and was aware that she did not request her P45 on that occasion. He confirmed that the claimant did not request her P45 from him on this occasion.

In reply to questions the witness confirmed that he is also a Health and Safety officer with the company. He became aware that the claimant was pregnant in January 2008 and at that stage she was five months pregnant. He denied that he had ever received any complaints from her or her supervisor concerning any difficulties she was experiencing in the workplace. He confirmed that he told the claimant she was being let go due to a downturn in business and confirmed that she would have been re-employed had she not sought her P45.

Claimants Case

The claimant gave direct evidence that she commenced working for the respondent company on the 24 May 2006. She was employed as a machine operative and worked 39 hours per week on a shift pattern. In November 2006 she was laid off by the company but did not request a P45 and returned to work for the company within two months. In October 2007 she informed her manager and another supervisor that she was pregnant. The witness started to experience bouts of fainting in November 2007 and these illnesses were particularly bad when she worked the night shift.

In November 2007 she handed a letter from her doctor to a person in authority in the office and asked him to give it to the general manager who was the respondents first witness. She met with the general manager at the end of November 2007 and was informed that her request to work the day shift only could not be accommodated..

The witness continued working through December 2007 and January 2008 and complained regularly to her shift manager during this period. On the 25 January 2008 she met with the production manager who informed her that there was no more work for her. She requested part-time work from him to help her keep her maternity benefit and did not request a P45 from the company. She was let go on the 25 January 2008 and has never heard from the company since that day. She did not work between that date and the 18 June 2008 which was the day her baby was born.

Under cross examination the witness confirmed that she met with the general manager and another person in November 2007. She gave the letter from her doctor to the company in November 2007 and denied that any meeting occurred in January 2008 in relation to her medical problems. She confirmed that alternative working hours were never offered to her and she was laid off in November 2006 and did not request her P45 at that stage. She agreed that she had signed a contract of employment and does not know why she did not resort to the grievance procedure outlined within that contract.

She confirmed during the course of her re-examination that the grievance procedure was not read out to her and nobody from the company explained the grievance procedure to her. It was placed in front of her for her signature and she was not given a copy of the contract.

Determination

In this case the Tribunal unanimously finds that the claimant was unfairly dismissed.

The Tribunal prefers the evidence of the claimant as to the events leading up to her dismissal, and in particular accepts that she made her employers aware of her pregnancy in November, 2007. The Tribunal notes that the Respondent's treatment of the claimant during her Pregnancy was well below acceptable standards, but despite this she continued to do her job. The Tribunal prefers the claimants evidence about the circumstances of her dismissal to the evidence adduced on behalf of the respondent and finds that she did not in fact resign, but was in fact dismissed and that her dismissal was unfair and unjustified.

The Tribunal feels the appropriate remedy is compensation, and the Tribunal awards the claimant €15,000 compensation for unfair dismissal.

As there was no evidence adduced to support the claim under the Organisation of Working Time Act, this claim fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

