EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:		**CASE NO.**
Employee	– ***claimant***	UD1448/2008
against		
Employer	– ***respondent***	

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. O'Connor

Members: Mr. P. Casey
Mr. K. O'Connor

heard this claim at Tralee on 28th April 2009

Representation:

Claimant(s): Mr. Andrew McCarthy, Sectoral Organiser, SIPTU, Connolly Hall, Upper Rock Street, Tralee, Co. Kerry

Respondent(s): In person

The determination of the Tribunal was as follows:-

Opening statements:

The claimant's representative stated that the claimant commenced employment with the respondent in March 2008. Sometime later, she became pregnant. She commenced working as accommodations assistant and subsequently got work in the L Room and in the laundry. Following her return from a few weeks' holidays, she was told that there was no more work for her. DB advised her of this because she was pregnant. DB then contacted the claimant to come and collect her P45 form. The claimant understood from this that she was dismissed.

DB – on behalf of the respondent – stated that the claimant commenced employment working forty hours per week. The claimant subsequently requested to only work twenty hours because her husband had gotten a job.

DB never had a difficulty with the claimant's work and said that she was very good to her. She did not have any issue with the claimant being pregnant. When the claimant told her that the work in the accommodations department was too hard, DB put her working in the L Room but told her that it would not be full time.

DB allowed the claimant take annual leave in mid-season and again in October. When the claimant returned after her October holiday, DB told her that there was no more work because, by that stage, the season was quiet. It was the claimant who requested her P45 form so as to be able to claim social welfare benefit. DB was full sure that the claimant would return to work and confirmed that the respondent currently had plenty of work until October. She would re-employ the claimant tomorrow if same was requested.

Claimant's case:

In sworn evidence, the claimant explained that she commenced employment with the respondent in March 2008 cleaning rooms upstairs. After three months, she went on annual leave. The claimant requested evening work from DB as her husband had gotten a job. The respondent accepted this request and she was given work upstairs cleaning towels and downstairs in the L Room. Later, when the claimant told D B that she was pregnant, she got hard work in the kitchen. She told DB that she could not do such hard work because of the danger to her baby. D B had said that if she could not work so hard, then there was no work for her. The claimant had been pregnant when she went on holidays and after one month, DB knew that she was pregnant.

One Monday, DB told the claimant that things were very quiet. At that stage, the claimant was going on holidays for two weeks. When she returned from holidays, she contacted the respondent to find out when she should return to work. However, DB told her that there was no work. Two weeks later, DB called her to come and collect her P45 form.

In cross-examination, the claimant confirmed that she believed that DB had fired her. She denied that she had been pregnant when she had requested a move from working upstairs in the accommodations department. She had been working for one month in the L Room when she told Ms. B that she was pregnant. She denied that the reason she had been allowed to work downstairs in the L Room was because she had found the work upstairs in accommodations to be too hard.

It was put to the claimant that she had known that there was a slow down in work in October due to lack of visitors and that she – the claimant – had requested her P45 form. However, the claimant denied that she had requested the form. Another employee had telephoned her and told her to call and collect the form. A letter from the respondent stating that work was going quiet would have been sufficient to enable the claimant claim social welfare benefit. She had been waiting for a call to return to work when she got the telephone call to come and collect the P45 form. The claimant confirmed that she never received a letter from the respondent stating therein that their work was going quiet.

The claimant established her loss for the Tribunal. Her child was born on 25 March 2009. She had not worked or sought alternative employment since the termination of her employment with the respondent, nor had she gotten alternative employment since the birth of her child.

Replying to the Tribunal, the claimant confirmed that she had not gotten a letter from the respondent informing her that work was quiet. The claimant had been waiting for a call back to the job. DB had told her that things were very quiet.

Respondent's case:

In sworn evidence, DB confirmed that the claimant commenced employment with the respondent in March 2008. In or about May/June, the claimant had come to her and her two supervisors and said that the work upstairs in accommodation was too hard and that she wanted to work downstairs. DB

therefore gave the claimant work in the L Room. She knew that the claimant was pregnant and did not have a difficulty with it, nor had she any difficulty with her work. She had gotten a doctor for the claimant when she was pregnant and had introduced hours of work in the laundry for the claimant to ensure that she got her twenty hours of work in the week.

At the end of the season, the claimant had wanted to go to her home country on holidays. As the respondent's business was quiet at that time, DB allowed the leave. The claimant only came back to work for one day following this holiday. By this stage, the L Room had been closed. Seventy-five percent of the staff were on short time. There was work available upstairs but the claimant had been unable to do this. The claimant requested her P45 form, which the respondent usually issues with a persons payslip. The P45 form was given to a senior housekeeper to give to the claimant.

DB stated that she had never used the word "fire" to the claimant nor had she ever fired anyone. She was very supportive of her staff. She was very shocked to have to appear before the Employment Appeals Tribunal. Every week, she gets requests for P45 forms from staff who want to leave. DB confirmed that the respondent currently has work available until October if the claimant wished to return to employment. The respondent's winter work is divided between remaining staff, so as each receive a few days work each.

In cross-examination, DB said that it was on or about early May/June when the claimant went to her two supervisors and requested a move from upstairs accommodation. She was unsure of specific dates because, at that time, the respondent was very busy. She confirmed that it was then that she became aware that the claimant was pregnant, and this was the reason the claimant wanted to move. She had no issue with the claimant's pregnancy as she had continued to employ her. It had been at the claimant's request that her hours had been reduced to twenty hours per week and this had happened in early June. The move downstairs had been to the L Room but when this was not busy, the claimant worked upstairs folding towels, which was not a physical or hard job. The claimant had been aware that this would happen and she had never indicated that she had a problem with it.

When DB became aware that the claimant was pregnant, she got a doctor for her. The respondent had not paid for this doctor because the claimant had told DB that she had a medical card. During a conversation in the L Room, DB had suggested to the claimant that she – the claimant – use DB's doctor and she had completed the medical card application form for her.

It had been one of the claimant's supervisors who had sought work for the claimant in the L Room as the work upstairs in accommodation had been too hard and the making of beds had been too physical for the claimant. DB could not say exactly when the request had been made but it had been in early summer.

When the claimant's pregnancy became visible, DB had been very happy for her. The respondent's dress code was white blouse and black slacks and this was something that DB would remind all staff about. She denied that she had made a comment to the claimant about a blouse she was wearing because of her pregnancy but because of the dress code. She could not remember exactly what she had said to the claimant but the comment had been about wearing a longer blouse because the one she had been wearing had been too tight when bending over. She denied that she had singled out the claimant for comment but would have said the same about the dress code to all of the staff.

DB was almost certain that the claimant had gone on holidays at the end of the respondent's season.

The claimant had been paid on 5 October for twenty hours worked, and holidays. When the claimant returned to the hotel, DB had met her at reception. By that stage, seventy-five percent of the staff were on short time and they would have been advised of same by letter. As there was no work for the claimant, the claimant requested her P45 form. The normal procedure in such instances is for a P45 form to be issued with a payslip through a head of a department to the person who requests same. In this instance, the claimant's supervisor had telephoned her to inform her that her P45 form was available for collection. DB again added that the respondent would love to have the claimant back working for this season, and that she would be accommodated in every way as she had been last season.

It was put to DB that once she found out that the claimant was pregnant, her approach to the claimant had not been that of a good and reasonable employer, that because of the claimant's pregnancy, she had been told that there was no more work for her and that the "end of the season" had been used as an excuse to terminate the claimant's employment, but DB denied that any of this was true.

Replying to the Tribunal, DB explained that the respondent's owner would have sent a letter to most staff advising them that they were going on short time and that there might only be one or two days work available to them each week. She was unsure when this letter would have been given to staff. It could have been after the claimant had left employment.

The claimant commenced her reduced twenty hours of work per week on about 12 June. DB thought that the claimant was working in the L Room at that stage. The reason for the reduced hours had been either because the claimant was pregnant and in order to be able to claim a social welfare benefit, as the claimant's husband had got a full time job.

Determination:

The Tribunal noted that the claimant's preferred remedy was that of re-instatement and in the course of the hearing, both the claimant and respondent confirmed that they had no difficulty with the remedies of re-instatement or re-engagement. Furthermore, during the hearing, the respondent confirmed that they would have no difficulty with the claimant working with them again.

It is the opinion of the Tribunal that all of the witnesses at the hearing of this case were extremely honest and the termination of the claimant's employment was as a result of confusion and misunderstanding. The claimant believed that the respondent dismissed her and the respondent's position was not clarified to the claimant. In the circumstances, the Tribunal finds that the claim under the Unfair Dismissals Acts, 1973 to 2001 succeeds and accordingly determines that the claimant be re-engaged in employment by the respondent from the first week of April 2009.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)