

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

- *claimant*

against

Employer

- *respondent*

under

CASE NO.

UD474/2007

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Fahy BL

Members: Mr T. Gill
Dr. A. Clune

heard this claim at Galway on 14th February 2008
and 14th May 2008
and 12th March 2009

Representation:

Claimant(s) : Ms Agnes O'Connor, Citizens Information Centre, Augustine Street, Galway

Respondent(s) : Mr. Seamus Ruane BL instructed by:
O'Dea & Company, Solicitors, 1st Floor, Hardiman House, Eyre Square, Galway

The determination of the Tribunal was as follows:-

At the outset and on submission of the claimant's P45 it was agreed that the claimant's weekly wage was € 413.04

Claimant's Case:

The claimant gave evidence. She had originally worked in a fast food outlet which was frequented by the co-owners of the respondent business (hereafter known as WD and CD). WD approached the claimant one day and explained that he and his wife were setting up the respondent business and would she like to work for them as a Manageress. He also asked her if she knew anyone else that would want to work there also and gave her his mobile number.

She commenced employment with the respondent in April 2006 and approximately one month later discovered that she was pregnant. In mid to late August 2006 she informed CD that she was pregnant.

On September 5th 2006 her partner, and co-worker, and herself were to attend the hospital for a scan. She had spoken to her supervisor and had cleared the time off three weeks prior to this. On September 4th 2006 she received a call from the supervisor saying she could not have the day off, as there was no alternative cover. She and her partner attended the hospital appointment.

On September 20th 2006 she spoke to CD concerning the staff rosters. CD informed her that takings were down and staff hours were to be reduced by ten hours in total. The claimant told the Tribunal that she reduced her hours, as she was pregnant and tired. Her partner's (hereafter known as J) and her colleague's (hereafter known as P) hours remained the same. She faxed the new roster to her supervisor (hereafter known as JB). JB amended the roster and faxed it back to the claimant. The claimant's hours were increased from 33 hours to 44½ hours, P's remained the same and J's were reduced to 23 hours. J had previously been rostered for 44½ hours. The staff were not happy with the new rosters. She texted CD and informed her that the staff were not happy with the rosters and that she thought they may leave. She later rang CD who shouted and screamed at her over the phone. The claimant told the Tribunal that this was the first time she had been treated like that.

CD came into the premises and asked the claimant to apologise and she did but she told the Tribunal that she did not know why she had been asked to apologise. She had never been reprimanded previously. When asked, she said that she thought it was September 29th 2006 when she was left to work all day on her own with no breaks. Normally there was one other staff member there but her partner (J) had left and P was on her day off. She received a call from JB informing her that the two new staff who had started two days earlier would not be returning to work there as their English was not too good. JB then rang P to request her to attend work. The claimant explained that she had trained these two people and had told them their English would improve and gave them a set of keys to the respondent's premises. New staff were required as she and her partner, and co-worker, were due to commence leave on the 1 October 2006. She was surprised that the new employees did not return to work. CD texted her to come to work at 10 am the following day.

On 30 September 2006 she arrived for work. P and JB were already there. The claimant explained that the blender was not working that day. She brought JB some CVs for potential staff. P then came to her and told her that JB had offered P the claimant's position. A few minutes later JB asked to speak with the claimant and informed her that she was dismissed and was given one week's notice. The claimant asked could she leave straight away and was told she could. She approached the counter and ordered a drink and told P that she was leaving. JB then approached her and told her to leave the premises. The claimant said that she was now a customer and she was informed that she, JB, did not want to see her or her partner on the premises.

Under cross-examination she denied that she had informed the respondent's that she was pregnant in July. She denied that she had spoken to CD in a threatening manner when talking about the change in rosters and the fact that employees were not happy. When asked if she had been in work that day, she replied that she had been at home and was ordering some stock. It was not unusual to do this from home. She explained that she had originally worked with her partner and sister but some time later her sister was let go after receiving several verbal warnings. When asked, she said that JB had told her on September 26th or 27th that the respondent company was not happy with her. They wanted an improvement in her performance and when she asked what that was she was not given an answer. She stated that JB had initially introduced herself to her as the Personnel Manager.

A co-worker of the claimant (known as P) then gave evidence on behalf of the claimant. She had

worked for the respondent for eleven months in total and confirmed that it was not unusual to work from home on your day off, ordering stock. When asked about the roster compiled by the claimant, she said that she had been happy with it but had not been happy with JB's revised version. She said that she was going to leave because of the reduction in her hours as she had a family to support.

On September 30th 2006 she opened the premises. The blender was not working so she informed the claimant and JB by telephone. She also told JB that she was looking for a new job because of her reduction in hours. She was then offered the position of Manager with more hours and more money. When she enquired about the claimant she was informed not to worry because the claimant was leaving that day. She told the claimant what had occurred. On her return from a break she again spoke to JB about the job offer and a new staff member. The claimant approached the table and asked what was going on. JB said she would speak to her later. The witness then went behind the counter. JB spoke to the claimant and the claimant approached the counter. She informed the witness that she had been fired and was very upset.

Under cross-examination she stated that she had spoken to WD in the past about her hours. When asked, she said that she did not remember bringing any complaints to another member of the respondent's staff. She told the Tribunal that she looked for a new job on the Thursday as her hours had been reduced. In reply to questions from the Tribunal she stated that she had taken over the claimant's position from October 2006 to July 2007. When asked why she left, she stated that she had not been happy working there.

Respondent's Case:

One of the co-owners (known as CD) gave evidence. She explained that herself and her husband owned the respondent business as well as other retail businesses. The respondent business was mainly her husband's "baby". She kept more to the other jewellery businesses which had a staff of over twenty-five, mainly female. The company had no difficulty with staff being pregnant in the past and JB was on maternity leave at the time of the first day of this hearing.

She had met the claimant when she worked for another fast food outlet. Her husband, WD, recruited the claimant, her partner and her sister to work in the business. The witness explained that it was not usual to employ partners or siblings on the same premises. The claimant told WD there would be no problem with them working together. JB was responsible for the day to day running of the respondents business.

The witness received a text from the claimant stating that no one was happy with the rosters and they were going to leave. She tried to ring the claimant but her phone was switched off. She rang the shop and asked the claimant's partner to ask the claimant to ring her. The claimant contacted her. She shouted at the witness telling her everyone was leaving and that there was a problem with JB. The witness told the claimant that she would speak to JB. She spoke to JB who informed her that the claimant had reduced her own hours to twenty-five and a half. She told JB to speak with the claimant.

The following evening the witness and her family went to the respondent's premises on a social visit. The claimant's partner (J) was sitting at the counter and told the witness he was leaving, as he needed more money to support his family. He said that he was to leave in two or three weeks. JB then decided to let the claimant's partner go and take on two more staff. Under cross-examination she stated that the claimant had originally compiled the staff rosters. The

salary bill spiralled higher than any of their other businesses so the system had to change. JB was also a Manager in two of the respondents jewellery stores but mainly worked from Claregalway. JB had joined the respondent in March 2005 and her position changed in 2007. She carried out all the administration work in Claregalway. The witness said that she did not have much contact with the claimant but would text her in the past to enquire what the day's takings were. It was common practice for the takings to be telephoned in every evening; if the call was not received the witness would text the premises involved for the figure. When asked, she stated that it had been up to JB to cut the hours of employees in the respondent business.

When asked, she stated that the claimant had reduced her hours to work over three days and the witness felt this was not right if a Manager was to manage a store properly. P was the only person qualified to look after the store while the claimant was on leave. When asked, she said that she felt the text the claimant had sent was disrespectful and she should apologise. JB was currently on extended maternity leave and was not due to return until late March 2008.

In reply to the Tribunal she said that it was her fault that the claimant and the staff of the respondent business did not have a contract of employment. The other staff employed by herself and her husband had contracts. When asked, she said that the claimant had verbally abused her and she could not work with her anymore. No disciplinary hearing took place in relation to the claimant as she had less than 12 months service. The claimant was unhappy about her revised hours and bullied other employees. The claimant was extremely difficult to work with because of her bullying.

The next witness for the respondent (AN) gave evidence that she is the regional manager for the respondent company. She visited the restaurant on a daily basis and found the claimant's behaviour to be aggressive and abusive. The witness attended a training course for two new employees which was given by the claimant's partner. He was very nasty to the new employees and these employees did not report for work after that training course. On the 30 September 2006 the witness was informed by an employee that she was being bullied by the claimant. She contacted JB with a view to carrying out an investigation into the alleged bullying but this investigation did not materialize as the claimant was dismissed beforehand. The witness remains working for the respondent and has since availed of maternity leave. She had no issues with the respondent in relation to her maternity leave.

Under cross-examination she denied that she told the two new proposed employees and another existing employee that the claimant was going to be dismissed. In reply to questions from the Tribunal she agreed that diary entries recorded in her diary may not have been entered on the actual day that they were recorded and could have been entered at a later stage.

The next witness (JB) gave evidence that she was in charge of the payroll system for all the respondents stores during the time the claimant was working for the respondent. She was also appointed to oversee the operation of the store where the claimant was employed. She was involved in the decision to dismiss the claimant's partner. She made that decision in conjunction with the owners as she had become aware that he was seeking alternative employment. She had advised the claimant that her work performance was unsatisfactory and the claimant accepted this advice. Ultimately it was the claimant's attitude and her unsatisfactory work performance that led to her dismissal. The decision to dismiss the claimant was taken by the witness and the owners of the respondent company and the fact that the claimant was pregnant was never part of the discussions in relation to the claimant's dismissal.

Determination

The onus of proof rests with the employee to demonstrate that her dismissal was for the reason of pregnancy. In this case the claimant has failed to reach the necessary threshold.

The Tribunal is satisfied that much of the evidence presented by the respondent in this case was less than credible.

Therefore, the claim of unfair dismissal for reasons of pregnancy under section 6 (2) of the Unfair Dismissals Acts fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)