

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER

PL2/2009

-appellant

against the decision of the Rights Commissioner in the case of:

EMPLOYEE

- respondent

v

EMPLOYER

under

PARENTAL LEAVE ACT, 1998 AND 2006

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D Mac Carthy SC

Members: Mr M Murphy
Mr J Maher

heard this appeal at Dublin on 23rd September 2009

Representation:

Appellants: XXXXXX

Respondents: Mr Willie Noone
SIPTU
8th Floor
Liberty Hall
Dublin 1

This case came before the Tribunal by way of an employer appealing the decision of a Rights Commissioner ref: (r-068366-pl-08/SR).

For the purpose of clarification the appellant shall be referred to as employer and the respondent referred to as employee.

The decision of the Tribunal was as follows:

The employer's representative stated the evidence recorded by the Rights Commission was by and large not in dispute. The employee, a single parent of a 14 year-old child, did not report for work

on 7th June 2008, as his daughter was ill. The company does not dispute that the employee's daughter was ill.

The employer was appealing the decision of the Rights Commission as it does not agree that the employee's absence on the day in question qualified for force majeure leave as, in the company's opinion, the employee's 'immediate presence' at home was not 'indispensable' in accordance with section 12 (1) of the Parental Leave Act 1998. The employer considered that the fact that the employee did not consider the child's illness to be so serious that a doctor, or any other health professional, should be called indicated that the situation was not one where the employee's immediate presence was required.

The employer's circular regarding force majeure leave states that "reasonable proof" may be required by the company and that a doctor's certificate may be considered reasonable proof.

The employee's representative also agreed that the information given in the Rights Commissioner's decision was correct. The representative stated that he understood the company's concern regarding abuse of force majeure leave in the company, but that there was no abuse in this case. The employee had phoned prior to his shift start time of 7am and had provided the employer with all the information, which had been sought. The employer guidelines do not state that a doctor's certificate is required and this requirement has not been applied to all employees who been granted force majeure leave to date.

Determination:

The Tribunal accept that the employee's child was ill and he felt that he had to stay with her. The employer was not in a position to dispute that. Prima facie he would be entitled to *force majeure* leave under Section 13.

The Tribunal also accept that a person claiming *force majeure* Leave may be required to provide some reasonable proof to support his claim.

An issue, which troubled the Tribunal as to what would amount to reasonable proof or reasonable evidence. Medical certificates would amount to reasonable proof, but on occasions such certificates may not be forthcoming and perhaps a doctor was not called. We would not say that a medical certificate would be required in all cases. In the absence of a medical certificate which amounts to reasonable proof this may be open to debate. In the absence of the medical certificate reasonable proof is more problematic. The Tribunal understands why an employer may be unwilling to rely on the mere "say so" of an employee. If however the employee's statement is formalised it would carry more weight as, for example, the way in which statutory declarations are acceptable in commercial and legal processes.

In the present case the Tribunal was supplied after the hearing, with copies of a document "Notice to Employer of *force majeure* leave" which included the following: -

Declaration

“I declare that the information given above is true and complete”.

This is not a statutory declaration but it is formalised to some extent. The Tribunal did not see the original of this document and admittedly were not supplied with the original of this document and we cannot be sure that this document was signed in this case.

On balance the Tribunal is of the view that the employee in this case produced “reasonable proof” under the “Employer Guidelines for Staff availing of Force Majeure Leave” dated April 2003. The Tribunal notes that the form of “Notice to Employer of Force Majeure Leave” provides for “a form of arbitration” by providing in the event of any dispute or difference between an employer and employee in relation to *force majeure* leave the issue may be referred by either party to a rights commissioner.

Accordingly the appeal fails and the Tribunal upholds the decision of the rights commissioner.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)