

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
UD855/2009

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

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr T. Gill
Mr O. Nulty

heard this appeal at Sligo on 24th February 2010

Representation:

Appellant : Mr Noel Treanor, INO, Westside Business Centre, Galway

Respondent : xxxxxx

The determination of the Tribunal was as follows:

Appellant's Case

The appellant secured a fixed term contract with the respondent as a locum clinical nurse manager 2 (cnm2). She commenced a three-month contract on 18 February 2008. Being a native of west Donegal the appellant was keen to return to the northwest and hoped that this appointment would not only further her career but would be used to secure a more permanent position. She understood she was taking over another employee's position who had moved elsewhere. There was no indication at the time that this employee was intending to return to the position now temporarily held by the appellant. The witness was also unaware that she was on a panel upon and during the commencement of her employment with the respondent.

While still on her initial contract the appellant informed her direct supervisor that she was pregnant.

The witness gained the impression from that supervisor that her relationship with the respondent would be on a long-term basis, albeit on fixed term contracts. The appellant's contract was renewed for a further three months up to 17 August 2008. A month earlier the appellant's supervisor told her that her second contract would not be renewed. The witness added that this supervisor also commented that she was leaving anyway. The appellant's maternity leave was due to commence on 25 August had her contract been renewed. The appellant then wrote to her supervisor seeking confirmation whether she was to be offered a third contract.

That supervisor responded in kind and stated that the appellant's contract would not be renewed as the requirement for a temporary staff member no longer existed. That letter also contained the information that a permanent staff member was being reassigned back to the section where the appellant had been employed. It was the appellant's belief that her termination of employment was due to her pregnancy and forthcoming maternity leave. She was never informed of other possible vacancies within the respondent.

Respondent's Case

The appellant's supervisor who was also an occupational physician who looked after the health and safety of the staff was not involved in the recruitment process of those staff including the appellant. Her role in that regard was to identify vacancies and then to inform recruitment who would act accordingly. The appellant was positioned in first place on a panel of two recruited on fixed term contracts in early 2008. The appellant chose to locate at Sligo instead of county Donegal where there was a six-month contract available. The witness who said she had no work problems with the appellant denied making any flippant remarks to her regarding her pregnancy and approaching maternity leave.

The recruitment section informed the witness that since the previous incumbent of the appellant's position had opted to return to that position it followed there was no longer a requirement for the appellant's services there. Recruitment made the decision not to renew the appellant's contract and it was up to that section to deal with panels and possible alternative positions within the respondent. There would certainly have been budgetary implications had the appellant's contract been renewed. This witness was certain she did not indicate to the appellant at any time that there was a hope of a long-term job for her with the respondent.

The appellant held the temporary position of cnm2 in the occupational health unit due to the absence elsewhere of its permanent holder. That holder had a permanently established status as an employee with the respondent. She told the Tribunal that as a result of restructuring at the Sligo General Hospital where she was based that she expressed a preference to return to her former position. The respondent acceded to that request and she returned to the appellant's post in August 2008.

Determination

The Tribunal heard and carefully considered all the evidence adduced by the parties. The appellant's service was less than 12 months. It therefore fell to the appellant to convince the Tribunal that she was dismissed and that her dismissal was connected with her pregnancy. The Tribunal found that there was no such connection whatsoever and that her contract which was for a fixed term, expired by the passage of time. The Tribunal therefore finds that there are no grounds to upset or vary the Right's Commissioner's recommendation on this issue.

Accordingly, the appeal under the Unfair Dismissal Acts, 1977 to 2007 is dismissed.

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Employment Appeals Tribunal

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This _____

(Sgd.) _____
(CHAIRMAN)

