

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE

CASE NO.  
UD256/2009

against

EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. Clancy  
Members: Mr. B. O'Carroll  
Dr. A. Clune

heard this claim at Limerick on 16th November 2009 and 22<sup>nd</sup> January 2010

### **Representation:**

Claimant: Ms Antoinette Simon B L. instructed by Brophy & Hills, Solicitors, Abbey House,  
7 Bank Place, Limerick

Respondent: Mr Derek Sheahan B L instructed by McMahon O'Brien, Solicitors,  
Mount Kennett House, Henry Street, Limerick

The determination of the Tribunal was as follows:

### **Claimant's case:**

The claimant commenced employment at this chartered accountants firm in March 2005. She described her role there as a secretary and personal assistant to two of the partners with the respondent. The witness indicated however throughout her evidence that her main contact within the respondent in this case was another partner with whom she enjoyed a good working relationship. She was due back from her maternity leave in early October 2007 and secured permission for a month's extension to her leave from that partner. Prior to returning to her workplace the claimant had two meetings with that partner. During the course of those meeting she informed him that she was pregnant and expecting her second child.

According to the claimant certain unwelcome remarks about some aspects of her second pregnancy were made by that partner. That partner also advised that her request to switch to part time work with the firm was not acceptable. The claimant had "no problem" with that decision. This partner also introduced the notion that the respondent would be willing to make her redundant in such a way that she would not have to wait for welfare benefits. The claimant agreed with him that she was now more of a mother than an employee with a career. She described that meeting as good

and proceeded to discuss its contents with her husband.

Following that discussion and a reflection on her contemporary situation the claimant opted not to pursue a statutory redundancy path but instead wrote to the respondent telling them she was returning to work on 5 November 2007. During the course of her maternity and extended leave her role at the respondent had been undertaken by a contract worker. Upon her return to the office the claimant observed that worker occupying her workstation and performing her tasks. There was no desk nor equipment available for her and no work was offered to her. A partner did drive her to a retail outlet where a computer was purchased. The next day there was hardly any work for her to do and this scenario made her feel uncomfortable and indeed distressed.

By that stage the claimant had come to be shocked at the redundancy offer and regarded that offer and the comments made by a partner as a sign that the respondent was picking on her for being pregnant and having a baby. She was also upset at that partner's query on the dates of her confinement and subsequent maternity leave. That feeling of victimisation was deepened by the treatment she received when she reported for work in early November. Through that period the claimant did not air her grievances to the respondent.

### **Respondent's case:**

The Tribunal heard evidence from one of the partners of the respondent. The company business entails auditing and accountancy matters. They employ thirty to thirty-four people.

The claimant commenced in 2005 as a personal assistant to the tax partner; then her role changed to working with another partner. He regarded the claimant as a good and very open and friendly employee.

The claimant went on maternity leave in April 2007. They sought and employed a temporary person (aka MS L) from an agency. This temporary person arrived weeks before the claimant left for leave so that the claimant could explain to MS L about the work.

On 11<sup>th</sup> September 2007 he was in the office and the claimant was at reception with her child. She asked if she could speak with him and they went to the boardroom. They chatted about her child. She told him that she was delighted to be at home with her child and also looking forward (to returning to work); She was caught between two emotions. She then asked him if she could return to work on a two or three day week. He told her that he did not think that it would be possible.

The witness explained to the Tribunal that they could not put her on a three-day week because of continuity purposes regarding the files.

The claimant then told him that she was pregnant with her second child. He said to her that it must have been a surprise. He also mentioned that he and his wife also had children in a short time span.

There was also a discussion about the claimant wanting to extend her maternity leave from 5<sup>th</sup> October to 5<sup>th</sup> November, and that was holiday leave that she was due.

The claimant was to meet her female colleagues for lunch on 28<sup>th</sup> September and he asked to meet her. He told her that he had discussed the proposition of her working part-time (with management) and that they could not do that. He told her that he would have to break Ms L's service for a week, that the firm would have to bear the cost of both of them from November until April.

He told the claimant that the company were willing to offer her a statutory redundancy. He told her that she would have to return in September and she could then consider if she wished to take redundancy. He repeated this to her numerous times and also tried to explain to her that it was her option (choice). He only mentioned redundancy he did not mention Unemployment benefit of social welfare payments. The reason he mentioned redundancy was that she wished to be with he child and to facilitate her. He stressed that it was her option, and that she would have to return in September. There was never any threat to her job.

The witness explained to the Tribunal that the business was extremely busy in October as they had to deal with tax and accounting deadlines and it was therefore very busy for the tax and accounting staff. However, in October it was a quiet time.

Regarding the office layout, he was responsible for it. On the Friday before the claimant returned he asked people to move desk. It was rushed because they were in a busy period. This was because they had to provide for five staff rather than four staff, (to accommodate Ms L and the claimant). He provided the claimant with his own laptop with a wireless keyboard and mouse.

On Monday when the claimant returned he felt that he had to purchase a screen for the laptop so when the claimant arrived they went to purchase a screen. He asked the IT people to establish that the claimant had access to the machine and to give her password and e-mail account.

On Monday 5<sup>th</sup> November the claimant was outside his office. He invited her into the office. He felt she was not her normal self. He asked her if she was ok. She indicated that she found it hard to be..., she held up her phone and indicated that she had been on the phone five times to check her children.

The claimant did not return after Tuesday 6<sup>th</sup> November; She sent in sick certificates.

### **Determination:**

The conduct complained of by the claimant was not sufficient to justify constructive dismissal. The claimant did not engage in the grievance procedures.

The Tribunal find that there was no dismissal. Accordingly, the claim under the Unfair Dismissals Acts 1977 to 2007, fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)