

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE – claimant

CASE NO.  
UD1419/2009  
MN1399/2009  
WT609/2009

against

EMPLOYER – respondent

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms M Levey BL

Members: Mr M Flood  
Ms N Greene

heard this claim at Dublin on 5th July 2010

Representation:

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Claimant(s): Mr Brendan Savage BL, instructed by:  
Ms Zoe Mollaghan  
Fanning & Kelly Solicitors  
2 Hatch Lane, Hatch Street, Dublin 2

Respondent(s): In person

The determination of the Tribunal was as follows:

The claimant was employed from October 20<sup>th</sup> 2008 until December 31<sup>st</sup> 2008. The claimant's representative contended that the claimant was dismissed due to her pregnancy and therefore was entitled to bring a claim under the Unfair Dismissals Acts, 1977 to 2007.

**Respondent's Case:**

The managing director of the respondent company gave evidence that they opened a new crèche in September 2008. Due to the economic situation in the country it was difficult to predict how many children would be attending. They had a number of children who only attended for mornings only so they sought a part-time staff member.

She interviewed the claimant and liked her. She liked that the claimant was a mother herself. She was a superb member of staff and was good with the children. When she was told that the claimant was pregnant she was delighted for her. There was no issue with the claimant being unable to carry out her duties. Six employees, at other crèches, had previously been on maternity leave. Two staff members were currently on maternity leave.

The witness and her husband, her co-director who also gave evidence, met the company accountant in December 2008 and discussed the required ratio of staff to children. Bookings for January indicated that they needed an extra person to cover afternoons at the crèche. The claimant couldn't work fulltime and was the only part-time staff member. It wasn't practical to hire someone for a couple of hours every afternoon and they could not afford to hire another full-time member of staff and keep the claimant on part-time. They decided that they would have to let the claimant go and hire a full-time staff member.

Neither the witness nor the co-director informed the claimant of her dismissal. The director instructed the crèche manager to inform the claimant. The crèche manager was not at the Tribunal hearing. The co-director produced the advertisement seeking a full-time staff member.

During cross-examination the witness stated that the claimant was the only part-time staff member they had. They had not given the claimant a written contract of employment, as they didn't know how long they would require a part-time staff member. She had told the claimant this at her interview.

The claimant worked from 7.30am until 1pm, 27½ hours per week. She said to staff that she was interested in leaving in March and asked if she could get free childcare, but free childcare was a perk for the managers only. Had the claimant been able to work full-time she would have kept her on. The witness asked the claimant's manager to find out if she could work in the afternoons. The claimant's manager made it clear to the witness that the claimant could not work afternoons.

She disputed that she has decided to dismiss the claimant due to her pregnancy. It was purely due to the hours required. No one is paid maternity leave, employees get the required leave and their job is held open for them. The claimant was not told that her job was at risk if she did not work full-time hours. There was no letter of dismissal. The witness did not speak to the claimant about her dismissal.

### **Claimant's Case:**

The claimant gave evidence that when she interviewed for the position she was told that they needed someone for the mornings from 7.30am. She was not told that the position was short-term. She was never told that her job was at risk. She went to work as normal on December 23<sup>rd</sup> 2008. Later that evening she received a phone call from the crèche manager who told her that she had to let her go as she could not work full-time hours. She asked if it was because she was pregnant and she said no. The claimant asked if she could find someone for the afternoons.

A few days after telling the manager that she was pregnant the manager asked her if she expected to go on maternity leave. The claimant preferred part-time, but she would have considered full-time hours if she had been told that her job was at risk, but she was never offered. The claimant gave evidence of her loss.

During cross-examination the claimant stated that she did not believe that she would have been fired if she worked full-time. She believed she wasn't offered full-time work because she was pregnant. The manager did not ask if she could work afternoons. She did not consider contacting her employers after she was dismissed to discuss the possibility of working full-time.

**Determination:**

Under normal circumstances the Act requires one year's service to bring a claim. One of the exceptions is dismissal because of pregnancy. While the Tribunal is of the view that the employer handled the dismissal in an insensitive and improper manner, the reality of the situation is, and was acknowledged by the claimant, that the dismissal was because the claimant could not work full-time hours.

Further, in answer to the question whether she believed she would have been dismissed had she been employed from the beginning in full-time hours she answered no.

Thus the Tribunal had no option, but to find that the dismissal was not as a result of pregnancy and therefore regrettably the lack of service takes her outside the remit of the Unfair Dismissals Acts 1977 to 2007, and therefore the Tribunal has no jurisdiction to hear the case under the Act.

The claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, and the Organisation of Working Time Act, 1997, were withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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