

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO.
UD2484/2009

against

EMPLOYER - respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Lucey

Members: Ms. M. Sweeney
Mr. D. McEvoy

heard this claim in Cork on 27 October 2010

Representation:

Claimant(s):

Ms. Denise Mulcahy BL instructed by
Edward O'Mahony & Co, Solicitors, 22 Tuckey Street, Cork

Respondent(s):

Mr. John Dunne, Matheson Ormsby Prentice, Solicitors,
70 Sir John Rogersons Quay, Dublin 2

The determination of the Tribunal was as follows:-

The claim

The claimant took maternity leave on 15 August 2008 and was due to return to work in or around June 2009. However, due to medical reasons, she was unable to return to work. She provided continuous medical certificates from June 2009. She was reported to DB (the respondent's general manager).

In or around 12 August 2009 she received a phone-call from DB who issued her with an ultimatum – she was given one week to decide whether she was returning to work or not. She felt that she had no option but to attend DB's office the following week to discuss the matter and she informed him that she could not work in her condition. She stated that he asked her to write out a handwritten letter of resignation which she duly did as she felt that she was left with no option but to resign.

The defence

The respondent's defence was that on 15 May 2008 the claimant notified the respondent of her intention to take maternity leave from 16 August 2008 to 14 February 2009 and also of her intention to take sixteen weeks' additional unpaid maternity leave from 15 February to 6 June 2009.

During her unpaid additional maternity leave the claimant became ill and furnished the respondent with a medical certificate. The respondent informed her that she could recommence on payroll (on sick pay) with effect from the date of her medical certificate (12 May 2009) and that by choosing to do so she would forfeit the remaining four weeks of her additional unpaid maternity leave. The claimant agreed to this and was in receipt of sick pay for twelve weeks (six at full pay and six at half-pay) from 12 May to 4 August as per the respondent's sick pay scheme.

On 13 August 2009 the claimant's manager (DB) phoned her to enquire as to her intentions to return to work. He did not, in any way, pressurise her into providing him a return to work date. His phone-call was to ascertain if her return to work would be in the near future as, if not, he would need to arrange further cover for her continued absence. He asked her to have a think about their conversation and that he would call her back in a week.

On 19 August 2009 the claimant called to see DB in person for an unscheduled meeting and advised him that she had decided to resign. She decided to resign of her own volition and was not in any way pressurised by DB. He asked her to confirm her intention to resign by providing him with a letter of resignation that she wrote before leaving his office.

Determination:

The Tribunal listened to testimony from the claimant, three employees of the respondent and the claimant's trade union official. The claimant did not establish that her resignation had been coerced by the respondent. She heard that there were redundancies in respect of other employees and she wondered if she could receive a redundancy lump sum. The claimant's trade union official contacted the respondent to enquire about this rather than making any complaint with regard to circumstances surrounding the claimant's resignation from her employment with the respondent. The Tribunal noted that she brought chocolates and a thank you card for the respondent on the day that she resigned. The respondent wanted the claimant's resignation in writing whereupon she wrote it out on the respondent's paper. Regarding any alleged pressure, the Tribunal preferred the version of the claimant's manager (DB) to that of the claimant herself. It was not established that there had been pressure to resign (or even any ill will towards the claimant) on the part of the respondent. The claimant did not discharge the onus of proof that was on her to show that there had been any form of dismissal (constructive or otherwise) as distinct from a very voluntary resignation subsequently regretted by the claimant when it was known that other employees had been made redundant. The claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)