

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

CASE NO.
PL1/2010

- appellant

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

- respondent

under

PARENTAL LEAVE ACT, 1998 AND 2006

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms J. McGovern B.L.

Members: Mr C. Lucey
Mr. J. Dorney

heard this appeal at Dublin on 20th May 2011

Representation:

Appellant(s) : Mr. Paul Mac Sweeney, CPSU, 19/20 Adelaide Road, Dublin 2

Respondent(s) : In Person

The decision of the Tribunal was as follows:-

This hearing comes by way of appeal by the appellant (employee) of a Rights Commissioners recommendation against the respondent (employer) under the Parental Leave Act, 1998 reference number r-078400-pl-09/JT.

Appellant's Case:

The appellant gave evidence. On October 30th 2008 the appellant's 18-month-old child was very sick. The toddler's temperature was extremely high, 39.1 degrees, and he had to be bathed in cool water and given medication. The appellant took this day off as a force majeure day. He contacted the family doctor but could not get an appointment until the following day. The appellant explained that he had had a previous incident with his older daughter in the past. The doctor told him to continue the temperature management and rehydration and was told to be on standby in case the child needed to be admitted to hospital.

On Friday October 31st 2008 he attended the doctors appointment at 10.a.m. The child's temperature continued to rise and fall until the following Monday. When asked he said that both he and his wife worked and his wife had taken leave in the past to look after their sick children. He

explained that his sister did care for the child when they were at work but he felt his son was too ill to be cared for by anyone other than his parent.

When asked he said that he had not considered going to another doctor and the family doctor knew their previous medical history. When asked he said that he would have gladly gone to work if his son's temperature had abated. When asked if he could have taken alternative measures he stated that he had tried to get a doctors appointment on October 30th but could not. He told the Tribunal that his son's condition was a matter of urgency until Sunday / Monday.

Respondent's Case:

A member of staff from the Personnel Department of the respondent company gave evidence. She stated that the appellant had been authorised a days force majeure leave had been granted to the appellant for October 30th 2008. She explained that in order for a day leave under force majeure to be granted three criteria had to be adhered to. This being the urgency, immediacy and indispensability of the person involved being absent from work.

The witness stated that the appellant could have taken alternative, for example annual leave, for October 31st 2008 as the three criteria had not been met. She stated that there was adequate time to get someone else to care for the child or an alternative doctor could have been visited. She also stated that force majeure leave was only granted in unforeseen circumstances. When asked she stated the respondent had based their decision not to grant the leave based on the legislation.

On cross-examination she stated that each application for force majeure leave was based on its own merits. She had not dealt with the case in question personally.

She said that she felt that the immediacy of the situation had also passed.

Determination:

The Tribunal have carefully considered the evidence and submissions adduced by both parties in this case. While the appellant himself considered the situation urgent the Tribunal find that all the criteria authorising a force majeure day under the Parental Leave Act, 1998 for October 31st 2008 was not met. This appeal under the Parental Leave Act, 1998 fails and the recommendation of the Rights Commissioner is upheld.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)