

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

EMPLOYEE –**claimant**

UD1794/2009

against

RP2019/2009

EMPLOYER –**respondent**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. P. McGrath BL

Members: Mr. R. Prole  
Mr. J. Maher

heard these claims at Dublin on 29 October 2010  
and 30 May 2011

**Representation:**

Claimant: Mr. John Sweetman BL instructed by, on the first day  
Mr. Paul Tracey and on the second day Ms. Jennifer Egan, both of  
Paul W. Tracey Solicitors, 24 Marlborough Street, Dublin 1

Respondent: Mr. Martin Collins BL instructed by Mr. Gerald Griffin, Solicitor,  
St. Paul's Church, North King Street, Dublin 7

The determination of the Tribunal was as follows:

The claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn at the outset.

**Determination**

The claimant had worked in the respondent's dental surgery for over ten years. The evidence heard by the Tribunal from all witnesses was consistent in that this was a united and convivial workplace. This was a workplace with a singularly good atmosphere. The claimant told her employer that she was pregnant in and around April 2008. As this was her first baby the claimant indicated that she would take any time off due to her. There can be no doubt that the claimant had always made

known that her ultimate intention was always to return with her husband to her native Carlow with a view to rearing their family in that county. It also appears to be common case that in the months of her pregnancy the claimant talked about the proposed move in terms of the preparation of house plans and planning application being lodged with Carlow County Council. Everybody in the office was aware of the plans and this has a lot to do with the open, chatty nature of the workplace.

It appears to the Tribunal that somewhere along the line the employer formed the distinct impression that the claimant's plans to move to Carlow were imminent and that the claimant did not intend returning back to the workplace at the conclusion of her maternity leave. The Tribunal does not criticise the employer for forming this impression, as there is no doubt that the claimant was regularly talking about these plans. The Tribunal believes the claimant was presumably excited about her pregnancy and the realisation of her dreams.

However any objective look at the facts would have to suggest that both parties should have exercised caution before jumping to any long-term conclusions. In reality a plan which involved obtaining planning permission, acquiring a site and building a home could not possibly take place in the time span envisaged up to the end of the proposed maternity leave which was due to terminate in May of 2009.

It was only shortly after going out on early maternity leave that the claimant realised that her long-term plans were not going to be realised in the short term. The Tribunal accepts that the claimant genuinely believed that she had left her options open with regard to returning to the workplace. For example the claimant never formally tendered her resignation and the claimant had indicated an intention to return to work when filling in her maternity benefit application. Crucially this latter fact was known to the company accountant who gave evidence that she understood that the claimant would be returning to the workplace and whose evidence the Tribunal found to be persuasive.

In the meantime the employer had been operating on the assumption that the claimant had finished in the workplace. In particular the employer had found a replacement for the claimant in the person of his own sister in law and the evidence is that the claimant helped train this lady into her own position in the months before the maternity leave. Equally there was a succession of plausible employee and third party witnesses who gave evidence of their understanding that the claimant was talking about leaving the workplace on a permanent basis. The Tribunal accepts that the claimant had allowed this understanding to be formed by her colleagues with her own talk about her future plans.

The overall impression is one of a genuine misunderstanding of the situation by both the parties. The claimant believed she would return to work in the event that her plans to return immediately to Carlow fell through. The employer believed the claimant was voluntarily leaving and restructured the workplace to reflect that fact.

The Tribunal finds itself in the unusual situation of finding both parties to have contributed to this misunderstanding and both parties taking a share in the blame. Both parties accept that the P45

issued at the start of the maternity leave was void

The Tribunal finds that the claimant must succeed in her claim under the Unfair Dismissals legislation but in compensating the claimant for loss of remuneration the Tribunal must have consideration for the fact that the claimant contributed to the situation. In the circumstances the Tribunal measures the award under Unfair Dismissals Acts, 1977 to 2007 at €18,000-00.

Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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