

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

-claimant

CASE NO.
UD2264/2009

against
EMPLOYER *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr C. Lucey
Ms M. Mulcahy

heard this claim at Dublin on 15th December 2010

Representation:

Claimant: Conor O'Shaughnessy & Co., Solicitors, 54 Botanic Road,
Glasnevin, Dublin 9

Respondent: Ms. Sheila Treacy, Ibec, Confederation House, 84-86 Lower
Baggot Street, Dublin 2

Background:

The claimant in this case had not one year's service. She contends that the dismissal was due to her being pregnant and therefore could bring a claim under the Unfair Dismissals Acts 1977 to 2007.

Claimant's case:

The Tribunal heard evidence from the claimant. She commenced working as a registered nurse in 2003. She worked in London up until 2008. She opened her contract of employment to the Tribunal and the disciplinary and grievance procedures also.

She found out in early January 2009 that she was pregnant. She had been getting pains in her kidney and went for blood tests and found out circa the first two weeks in January that she was pregnant. She phoned the hospital occupational health (OHP) person to check if she needed to take precautions as she worked in the A&E department. The OHP thanked her for her call and told her to inform her line manager. She explained where she worked and told the OHP that she had no line manager. She phoned the (Nurse) Bank manageress (SL) and the A&E manageress

(NH).

It was put to the claimant that the respondent case, on their form T2 of reply, that they were only informed of her pregnancy on the day of her dismissal. The claimant replied that she was 100% sure that she notified the hospital of her pregnancy the respondent interjected that it was an error on their part that the T2 form indicated that date and that they were informed on 20th January of the claimant's pregnancy.

The claimant stated that she enjoyed the work up until January when there was a change in the way she was spoken to and she was intimidated.

The claimant was asked about an assessment meeting / probation and assessment document and she agreed the meeting took place.

On 13th November 2008 she was called to a meeting in which she was told there was a complaint against her that she used her mobile phone in the work area and that she left medication unattended. She explained that she had used the calculator on her phone to calculate medication amounts. Regarding the medication she had left them in a room where two nurses were and had asked them to keep an eye on them whilst she searched for a key to the room where they kept the medication. Regarding the complaints she was not provided with the nature of the complaints in advance.

There was another meeting on 9th January 2009. The claimant explained that she arrived into the A&E on 6th January and the corridor was full of patients. There were only three nurses in at the time, herself and two other bank nurses. They were given ten to twelve patients each. One of the bank nurses usually dealt with geriatric patients. She explained to a Clinical Nurse Manageress (JL), that she could not be responsible for two other nurses as well as ten to twelve patients. JL told her to prioritise her workload.

There was another meeting on 30th January. The meeting pertained to an earlier situation in the Maguire Ward. The claimant explained that she was not happy with a "handover" that she was given, she was shouted at by another nurse and she felt bullied. SL told her that she had no other place to put the other nurse. SL asked the claimant if she wished her to speak to the CNM about her complaint and she told SL that she told SL "Not yet I will finish my shift as there is no one to cover". She also said that she would see how it went but would go home if it happened again.

By the end of January she felt a noticeable change in attitude towards her. She felt that there were constant claims against her and that the claims were not being investigated. All of the staff knew that she was pregnant.

Another document entitled, Problem/Action Plan Sheet, was opened to the Tribunal. The plan identified problems regarding the claimant. Which included non-adherence to hospital policy regarding, uniform, medications, using of mobile phone documentation guidelines. There were also other matters such as communications issues, teamwork, communication with patients and colleagues.

The claimant explained that she changed her shoes and she spoke to SL regarding communications issues. The management felt she did not work within the team. She told them that no one had spoken to her about it and now they were presenting it as a complaint. She did sign the action plan sheet as she wished to improve and to take responsibility.

On 9th March other incidents took place. The claimant arrived to work and they were short staffed. Then an agency nurse arrived. She found that a patient who had a head injury and was a patient of the agency nurse was wandering undressed in the corridor. The agency nurse did not return for three hours. She went to complain to the CNM (JL), but she was at lunch.

She then arrived back to a patient of hers and saw another nurse (M) was feeding him. She told the other nurse that she had fed the patient earlier and M started shouting at her. She was mortified. She was later called to the office and the CNM told her that M said she (the claimant) had been rude to her (to M). The claimant told her that she was looking for her earlier as M was missing. The CNM told her that she had sent M to the CDU. She felt the CNM was defending M. (JL), then warned her that she was on probation.

At a meeting with the HR department on 22nd April the claimant was warned that she could lose her job. She was dismissed by letter dated 22nd April 2009.

She had told people / managers that she was pregnant in January and mentioned it on many occasions. She felt a huge change towards her because of the way she was spoken to.

Cross-examination:

It was put to the claimant that she did not raise the issue of alleged pregnancy related treatment with the respondent. She replied that didn't because she was worried about losing her job.

It was put to the claimant that 78% of the staff are female, 11% are on maternity leave and 5 of the bank staff (bank of nurses) are on maternity leave and they had no issue with the respondent. The claimant couldn't comment on other individuals.

The claimant conceded in cross-examination that she did breach policy regarding breaks.

The Tribunal asked the claimant why she was chosen to be discriminated out of all of the females in the respondent. She replied, "I don't know, I have no idea".

Determination:

The claim before the Tribunal is under the Unfair Dismissals Acts 1977 to 2007. The claimant in this case had less than one year's service and contended that her dismissal was connected with her pregnancy.

The Tribunal are satisfied that there were similar complaints regarding the claimant

before and after the notification of her pregnancy. Similarly, the Hospital approach, (whilst flawed), to those complaints was the same both pre, and post notification of her pregnancy. The Tribunal are satisfied that the claimant has not discharged the burden of proof linking her pregnancy to her alleged unfair 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)