

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYER
-appellant

CASE NO.
UD684/2010

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

EMPLOYEE *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Ms J. Winters
Mr. S. O'Donnell

heard this appeal at Trim on 5th May 2011

Representation:

Appellant: In Person

Respondent: Ms. Fiona Conroy, Information Officer, Citizens Information Service,
1 Brews Hill, Navan, Co Meath

This case came before the Tribunal by way of an employer appeal of the Rights Commissioner Recommendation ref: r-080310-ud-09/JW. The appellant shall hereinafter be referred to as the employer and the respondent the employee.

Respondent's (employee) Case

The employee commenced employment in 1997 as a full-time operative in the employer's factory. In February 2006 the employee went on maternity leave. The employee did not return to work post maternity leave but submitted medical certificates on a regular basis. In the interim the company had been taken over by new owners. The employee had no contact with the employer until she received a letter dated in early January 2009. It stated, 'This letter is to inform you that we no longer require you to send in Medical Certificates to us as you no longer appear as an employee on our records.' The employee was certified fit to return to work 4 weeks later but did not inform the employer, as she felt that they no longer employed her. The employee did not receive a P45.

The employee contacted her representative who attempted to contact the employer on her behalf.

There was no response from the employer until they requested a meeting with her in March 2009. The employee, as advised by her representative, did not attend this meeting. The employee has not been, and is, not actively seeking employment.

Appellant's (employer) Case

When the employer took over the business there were a number of staff changes. As a result of the staff changes in administration and paperwork not being kept up to date the employer was unaware that the employee existed. When the employer became aware of the employee they attempted to contact her by making informal inquiries to family members (who were also employees) and by letter. The employer offered to find a role for the employee and requested a meeting with her, both of which she declined.

Determination

The employer took over the business in 2006. After the takeover there were a number of staff changes. As a result of the staff changes and paperwork not being kept up to date the employer was unaware that the employee was employed by him. When he did become aware of the employee he attempted to contact her by making informal enquiries to family members (who were also employees) and by letter.

Under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 the new employer (and previous employer) has a duty to advise the employees of the former employer of the takeover and the fact that their rights, duties and entitlements will not be affected merely by reason of the takeover. The Tribunal finds it surprising that there were no records showing this employee's existence albeit on maternity leave (and sick leave thereafter). To follow proper procedure the employer should have set out clearly in a letter to the employee that she was no longer considered an employee and inviting her to a meeting to discuss this. Having said that, the Tribunal fully acknowledges that the employer invited the employee to a meeting in March 2009 and the employee, having taken advice on the matter, declined to attend this meeting. Because the employee refused to attend this meeting she contributed overwhelmingly to her dismissal.

Taking into account the employee's contribution to her dismissal the Tribunal awards her €1,500.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)