

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYER – *claimant*

CASE NO.
UD2507/2009
MN2350/2009

against

EMPLOYER – *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. F. Crawford B.L.

Members: Mr. D. Peakin
Mr. S. Mackell

heard this claim in Naas on 21st April 2011 and 26th August 2011

Representation:

Claimant(s): Mr. Brendan McDonald, Coughlan White O'Toole, Solicitors,
Moorefield Road, Newbridge, Co Kildare

Respondent(s): Mr. David Farrell, IR/HR Executive, IBEC, Confederation
House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Preliminary Objection:

This objection related to the jurisdiction of the Tribunal. It was submitted that the Tribunal lacked jurisdiction to hear the matter in circumstances where the claimant was employed on a fixed term contract of employment. This application was strenuously opposed by Solicitor for the claimant in that the contract was not given to the claimant in normal circumstances and in

fact was backdated. The tribunal determined that there were two issues, the first, was it a fixed term contract and secondly did the dismissal happen on pregnancy grounds within the contract. The Tribunal determined that it had jurisdiction.

Claimant's Case:

The claimant worked for an employment agency and was placed with the respondent. After working there for eight months, an employee of the respondent went on sick leave. The claimant was asked to take over the role of the employee on sick leave. The respondent bought her contract from the employment agency and in April 2009 she was given her a six month contract and a pay rise. At the time she was not given a written contract of employment or a company handbook.

In June 2009, she discovered that she was pregnant. She spoke with ND the Commercial Director, who told her there would be a position in the company for her. She formally told human resources that she was pregnant in September 2009.

COM put the employment contract on her desk, and opened the page for her to sign. That evening she brought the contract home and when she read it noticed it was a fixed term contract. The next day she telephoned LC. She got talking to COM who mentioned a termination date. She said it there would be no problem extending the contract and she should not be worried. She was under the impression from ND that after six months' probation she would be made permanent.

She was sent leaflets on her pregnancy entitlements via email and took a half day annual leave for her first hospital appointment. Her second appointment was for 1:30pm and was told she could not get the half day. She was told to go to the doctor and then return to work afterwards.

She received a phone call from MD who asked to see her. When she went to meet him LC was there and she was told her contract was up. When she told the respondent that she was pregnant, they hired SB. She trained SB on her work and nearer the end took a back seat. As far as she was aware, SB was hired to cover her appointments and maternity leave. SB was given a new six month contract.

Under cross examination the claimant said she did not know ND did not have the authority to offer her a permanent contract. When MD told her the contract was up, she started to cry, she didn't even think about the conversation with COM. She was of the belief that she would get another six months depending on the sick employee's condition.

Mr ND gave evidence. He was the Commercial Director with the respondent and was very impressed with the claimant. The business was paying an hourly rate to the agency and a business decision was made to employ the claimant directly. The claimant told him she was pregnant and he contacted human resources. He was aware the six months was coming to an end, and knew the employee was still sick. He had a conversation with MD. He had an assumption that she would get a full time job. Staff did not know he was resigning and he was surprised that he did not have the authority. For succession planning he had thought his plans would have been followed through.

Under cross examination ND said it was cheaper to employ the claimant directly. She was

employed to take over a major contract to cover for the sick employee.

Respondent's Case

MD looked after a team and each member was cross trained. He heard about the claimant's pregnancy through an email. He had a conversation with ND. The claimant was doing a good job. The claimant's contract was not extended because SB joined a month before the claimants end date. Pregnancy had nothing to do with the claimant leaving. He explained that they had two employees on maternity leave and that there were no full time positions available.

Under cross examination MD said he did not see the claimant's contract of employment. He had spoken to HR and that is how he knew the claimant's contract was coming to an end. He knows the start and finish dates of his team and if it is a temporary contract it is six months. He could recommend an extension of a contract but the Managing Director has the final approval.

LC works in human resources. The claimant emailed ND to say she had not received a contract of employment. She replied to the claimant saying that her contract was ready for collection at reception. At that time, she was preparing for an audit. There are five buildings on the business park and the claimant would have to walk across the business park to collect the contract. It was not common she had to chase up on contracts of employment.

She was notified by ND that the claimant was pregnant. As this was the claimant's first pregnancy she would not be aware of the policies of the respondent. The claimant informed LC that she had a hospital appointment. LC replied asking which hospital and was she availing of combined care. Some employees would book a scan for the morning and take annual leave for the afternoon. This was not a problem and this is what the claimant did.

From 2006 to 2010 fifteen employees with the respondent went on maternity leave. Some would be on their second pregnancy. The e-mails sent to pregnant employees were of a generic nature.

The claimant was not given any advanced notice of the meeting on the 21st October 2009. At that meeting she explained to the claimant that she was aware that ND was resigning and that circumstances had changed. She acknowledged that ND had sent her the e-mail regarding extending the contract, but ND was leaving the business. She rang the MD to see if ND had discussed an extension and MD did not know anything about it. HF who had been working for ND would be free for three days a week and as she was a permanent employee she would be moving to MD's section. This is why her contract was not extended. She took notes of the meeting but did not give the claimant a copy.

The company used fixed term contracts because of the uncertainty in the economy. When she met the claimant she was honest with her. The MD made the decision not to extend the contract about three days before the meeting.

Determination

The claimant's case was that she did not have twelve months' employment with the respondent but that she was dismissed for reasons of pregnancy and was entitled to bring a claim under section 6(2)(f) of the Unfair Dismissals Acts, 1977 to 2007.

The claimant was employed with an employment agency. Her work was to a standard that the respondent felt it wise to employ her directly. She was seen as a valued member of staff and had an expectation of a permanent role. The Tribunal finds the dismissal was mainly due to the pregnancy of the claimant under section 6(2)(f) of the Unfair Dismissals Acts, 1977 to 2007 and awards the claimant compensation of €24,750.00.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn at the outset.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)