

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE
- *Appellant*

CASE NO.
UD1059/2010

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

EMPLOYER
EMPLOYER
- *Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr R. Maguire, B.L.

Members: Mr M. Noone
Mr. J. Dorney

heard this appeal at Dublin on 7th December 2011

Representation:

Appellant: Mr. Richard Grogan, Richard Grogan & Associates, Solicitors, 16 & 17 College Green, Dublin 2

Respondent: Joe's Barber Shop, Clonsilla Village, Dublin 15

This case came before the Tribunal by way of an appeal of a Rights Commissioner's recommendation r-086655-ud-09 JOC.

The determination of the Tribunal was as follows:-

Appellant's Case

The appellant'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 appellant told the Tribunal that she commenced working in the respondent's barber shop in April 2009 and finished in October 2009. The appellant told the Tribunal that her employer found out that she was pregnant when he came back from holidays. The employer asked her how she would continue to work with a big belly. She told him that she was in good health and could continue to work until the end of her pregnancy. The employer told her that she was crazy.

At this stage the appellant was working two days per week. This was reduced to one day per week when the employer found out that she was pregnant.

The appellant received her hours for work weekly via text message with the respondent. The appellant would text the respondent at the beginning of a week to find out what hours she was required to work in the coming week.

The last day that the appellant worked in the shop was the 25th September 2009. She texted the employer three weeks in a row requesting her hours for work and was told that there was no work. On 17th October 2009 she phoned the employer and he informed her that she no longer worked there.

During cross examination the appellant explained that she did not tell her employer that she was pregnant until he returned from his holidays in September 2009. At this stage some other members of staff were already aware that the appellant was pregnant. She informed her employer verbally about her pregnancy, at which stage he did not inform her that she must submit the information in writing.

The appellant did not agree that on receipt of her terms and conditions of employment it was explained to her that she would be covering the holiday period for the summer. The appellant also told the Tribunal that the respondent's wife was not in attendance when she informed him about her pregnancy. In response to questions from the Tribunal the appellant explained that she had not seen a copy of the terms and conditions of her employment until today's hearing.

Respondent's Case

The tribunal heard evidence from AD, the respondent's wife. She told the Tribunal that the appellant had worked for them prior to this period of employment and had left of her own free will. In 2009 the respondent and his wife were preparing for holidays and a member of staff told them that the claimant was looking for 1 to 2 days work per week. The respondent phoned the appellant and told her that he could give her work covering holidays. He then said he was opening a new shop and there may be the opportunity for more work.

AD and the respondent explained to the appellant that the work available was for covering their holiday period, which runs from June to August, but might be able to explore the opportunity of more work on their return.

AD and the respondent went on holidays in May and when they came back in September they were informed by another member of staff that the appellant was pregnant. The respondent approached the appellant and asked her if she was pregnant to which she replied that it nothing to do with him.

AD explained that when the summer is over and holidays are finished there is not enough work for everyone and it has nothing to do with pregnancies. Employees have gone on maternity leave and continued to work for the respondent afterwards. The appellant's hours of work were reduced because the workload was no longer there.

The respondent received a text message from the appellant on 17th October 2009 saying that she was trying to plan her week and wanted to know when she was required to work. The respondent did not reply. The next communication was receipt of notification of a claim by the appellant to the Labour Relations Commission.

During cross examination AD told the Tribunal that most of the time she would talk to staff with her husband and if there was a feminine issue she would look after it. She was present with the respondent when he asked the appellant if she was pregnant.

The claimant's hours of work were reduced to one day because the turnover was not there. She denied that a new employee was taken on to work in the shop.

The respondent did not reply to the appellant's text message on 17th October 2009 because he already had a conversation with her explaining that if there was work available for her he would make contact with her. AD told the Tribunal that the appellant was not asked to stop working and she was never asked to leave. AD said that just because the appellant did not get work it does not mean that she was dismissed.

Determination

Based on the conflicting evidence submitted by both parties the Tribunal, on balance finds that the appellant was unfairly dismissed. However, the Tribunal are not satisfied that the appellant made sufficient efforts to mitigate her loss. Accordingly, the Tribunal awards the appellant the sum of €3,520.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)