

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

UD671/2010

Against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. J. Browne

Mr. F. Dorgan

heard this claim at Waterford on 9th November 2011

Representation:

Claimant: The claimant in person

Respondent: Gerard O'Herlihy, Nolan Farrell Goff, Newtown, Waterford.

Respondent's case

The respondent owns five clothing retail outlets in the Waterford area and employed the claimant in the Dungarvan shop. The claimant commenced employment on 25th August 2008 and made the respondent aware that she was pregnant at that time.

The respondent did not know and had not been informed by the claimant of the date on which she was to commence Maternity leave. The claimant was rostered to work on 27th, 28th and the 31st December 2008 but did not turn up for work on any of those dates. There was no communication from the claimant and the respondent made several unsuccessful attempts to contact her.

The respondent required employees to send in medical certificates when out sick but no such certificates were received from the claimant. As there was no contact from the claimant and the respondent could not contact her, a P45 was sent to her. On 15th January 2009 the respondent received a letter, from the claimant, informing him that she was on Maternity Leave. This letter was dated 20th December 2008. However, the witness for the respondent held that this letter was only sent after the claimant had received her P45.

A meeting took place, at the request of the claimant, between the witness and herself in

February 2009. At this meeting the sole concern of the claimant was her claim for Maternity Benefit from the Department of Social and Family Affairs. The claimant had her children with her at this meeting. She was upset and asked the respondent to give her a letter confirming that she was employed by the respondent and currently on maternity leave. The respondent duly obliged her with a letter for that purpose.

There was no further communication between the claimant and the respondent until the respondent received notification of the claim before the Employment Appeals Tribunal.

Claimant's case

The claimant had spoken to the respondent after she had received a letter dated 8th December 2008 from Dept. Family and Social Affairs. The respondent requested that she let him know when she intended taking maternity leave and the claimant told him that she was feeling well enough and would continue to work over the Christmas. The claimant then told the respondent that she would be on maternity leave from 31st December 2009.

The claimant last worked on 22nd December 2008. She was scheduled to work on 27th December 2008 but was unwell and rang in to say she would not be attending work that day. The claimant asked the person she spoke to on the phone whether she should contact the owner herself but was told that there was no need to as that person would let him know. Subsequently the claimant discovered that her P45 had been sent to her at an address she no longer resided at. Having gone to her old address and picked up the P45 the claimant phoned the respondent's office and was told by the Secretary that as far as the owner was concerned the employment had finished.

After the claimant's baby was born she was informed that the respondent had sent incorrect paper work to Dept. of Social and Family Affairs and she tried to contact the respondent about this. A meeting was arranged with the owner for February 2009 and the claimant attended this meeting on her own and did not have her children with her. The claimant asked the respondent to confirm in writing that she was still in employment but on maternity leave and consequently the respondent issued a letter stating that the claimant was on maternity leave. The owner also told the claimant that things were very quiet at that time and he was thinking of closing the shops and that he would try to sort things out after the claimant's maternity leave.

Four weeks before the end of her maternity leave the claimant called to the shop and handed in a letter applying for sixteen weeks unpaid maternity leave. There was a notice in the shop window looking for staff. The claimant tried to ring the owner and called to the shop several times but received no reply from him. Around this time the claimant's Mother was ill and she went home to Poland for a time. While she was away her husband met with the owner and was told that there was not much work. After this the claimant rang the owner but got no reply.

The claimant subsequently obtained work with another employer from September 2009 to July 2011. At the date of the hearing the claimant was employed elsewhere.

Determination

There was a contradiction in evidence between the parties. However, on balance the Tribunal accepts the evidence of the respondent and is satisfied that the claimant was not unfairly dismissed. Therefore, the claim under the Unfair Dismissals Acts 1977 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

