

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.  
UD2254/2009

EMPLOYEE *-claimant*

against

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 F. Moloney  
Mr C. Ryan

heard this claim at Dublin on 25th January and 3rd June 2011

Representation:

Claimant : Mr Brian Conroy B L instructed by  
Able Solicitors, 72 Tyrconnell Road, Dublin 8

Respondent : Mr. Kevin Langford, Arthur Cox, Solicitors, Earlsfort Centre,  
Earlsfort Terrace, Dublin 2

#### **Background:**

The respondent is a multi-national organisation that provides technology driven facilities and energy management solutions to its various clients. Among the clients of its Irish branch was another transnational company that offered commercial and consumer financial products to its customers. The respondent employed the claimant as a receptionist in late July 2008. Within a short time she was placed in that role at that transnational company. At that time the respondent had a contract with that company to provide services to it and that entailed putting a small team on the premises to carry out its contractual obligations. While there the claimant interacted with several colleagues from that transnational company but was supervised by a fellow employee of the respondent.

#### **Claimant's case:**

The Tribunal heard evidence from the claimant. She was employed as a receptionist and worked from 8.30 am to 5.30 pm. Her supervisor was AD. A colleague of hers (MI) covered her days off and another colleague (MP) covered her lunch breaks.

She commenced working in the transnational company that was a client of the respondent. One

month later a senior person in the client company (JF) interviewed her. This she thought was to get to know her better. JF spoke to a manager of the respondent company about the clothes that the claimant wore and that she was to wear more business-like clothing. Other than that there were no signs that the client company was dissatisfied with her and there were no complaints about her.

There were some difficulties regarding the issuing of visitor magnetic swipe cards. One of her duties was to issue the cards to visitors. She would take the visitors phone number and ask them whom they were there to visit. She had difficulties that visitors were not reverting to her. The situation was that visitors called to her to get a card, they then parked their car in the car park and then went directly to the person they were to see. She knew that JF did not like her allowing people to go directly upstairs, (that they should await for the person they were there to visit to call to reception). The situation was that she received complaints from JF. However the situation was difficult for her as she was not a “policeman” and that some visitors returned the cards and some did not return them. She could not force the visitors to return the cards.

Another situation arose whereby a customer of the client rang her when she was on reception. He was irate as he was unhappy with customer service and he insisted on being put through to the MD. She knew that neither the MD nor the MD’s assistant dealt directly with these customer calls. She placed the caller on hold and phoned her supervisor and was told that whatever she did she was not to put him through to the MD. She told the customer that there was nothing more that she could do and gave him the work e-mail address. She had not “hung-up” on him.

Her supervisor (AD) phoned her to tell her that JF had complained to him about her. AD told her that she needed to be more diplomatic.

The claimant explained to the Tribunal that she had gone to the post room on 16 June 2009 and told AD, MP and MI that she was pregnant. AD congratulated her on her news. She asked if she could take Friday off to visit the hospital. AD asked MI to fill-in for her on that day she was to go to hospital.

The claimant and others were called to a meeting with three colleagues to meet the commercial director and the HR manageress. They were told that the client was not happy and that they would speak to each of them individually. They also said that AD would be promoted to a manager to help the situation. The claimant’s colleagues left the meeting and the HR manageress and commercial director spoke to the claimant alone. They told her that there were complaints about her and that unfortunately they had to give her two week’s notice. She was shocked and asked what the complaints were. She was told that it was not a pleasant subject and that they would rather not say.

The claimant got a letter of dismissal and appeal.

These events were seventeen weeks before her due delivery date. She needed to work one more week (to enable to claim maximum maternity leave entitlement from Dept. Social Protection). She wrote and asked the respondent if she could stay in work for one more week and this was refused.

The claimant sent an e-mail to JF of the client company. JF helped her in that she requested the Respondent to allow the claimant to remain on for one more week to train someone else. The Respondent did this and her date of finishing would be 21<sup>st</sup> July 2009.

The claimant told the Tribunal that as she did not get a letter of complaint then she must have been dismissed because of her pregnancy, they did not want to keep her on for even one more week. She was only a few weeks away from being twelve months in the Respondent. Also if other staff were not liked by customers or there were problems they were transferred. She never got the e-mails that detailed complaints against her.

**Respondent's case:**

The respondent is a multi-national organisation that provides technology driven facilities and energy management solutions to its various clients. Among the clients of its Irish branch was another transnational company that offered commercial and consumer financial products to its customers. The respondent employed the claimant as a receptionist in late July 2008. Within a short time she was placed in that role at that transnational company which was based in south county Dublin. At that time the respondent had a contract with that company to provide services to it and that entailed putting a small team on the premises to carry out its contractual obligations. While there the claimant interacted with several colleagues from that transnational company but was supervised by a fellow employee of the respondent.

One of those colleagues having the title of European Facilities Manager told the Tribunal that he formally commenced employment with this transnational in December 2008. Earlier he had undertaken contractual work for the respondent. This witness shared an office with the claimant's supervisor and acknowledged he had no direct authority into disciplinary matters affecting the claimant. However, by the spring of 2009 he had formed the impression through observation of the claimant's work and behaviour that she did not possess the qualities, capabilities and competence to perform her role as receptionist for the company.

He brought his concerns about the claimant to the respondent's commercial director for the first time during a meeting on 24 April 2009. The witness was assured that those concerns would be raised with the claimant's supervisor. On 19 May the witness asked the commercial director that action be taken against the claimant. Despite the witness's disapproval of the claimant the transnational client had not issued any warnings to her. He was not aware either of any action taken against her by the respondent regarding a reported incident on 8 December 2008. References were made to an email sent by a customer of the client company on 3 June 2009 complaining about the claimant's behaviour. The witness was involved in forwarding that email to a senior staff member at the respondent's human resource department on 18 June. He also forwarded another email that was dated 11 June concerning the claimant's alleged wrongdoing to her supervisor on 18 June. The same day he again met with the respondent's commercial director and repeated his demand that action be taken against her. That action included her removal and replacement as a receptionist on the client's premises. In common with the witness's other meetings there were no documentary evidence produced on the contents of those meetings.

This witness became aware of the claimant's pregnancy on 16 June 2009 and was not present at a meeting on 23 June when she was given notice of the termination of her employment with the respondent.

The respondent's facilities co-ordinator was based at the transnational's office block where he shared an office with the previous witness. While he was the claimant's supervisor she was managed by another colleague who was based at the respondent's office located elsewhere. That

manager recruited the claimant who was trained by a previous receptionist. The witness took responsibility for issues relating to the claimant's work. However he was not in attendance when the previous witness and the respondent's commercial manager met and discussed the claimant's work in April and May 2009. This co-ordinator was aware of those meetings and the complaints levied against the claimant. He forwarded an email to a human resource adviser on 18 June regarding a reported incident involving the claimant. This witness did not observe the incident in question.

This witness had a meeting with the client's European facilities manager in early June when he was told that the client wanted a change at reception. At that time he was neither asked to act on that did ask but understood that the claimant was to be replaced. On 16 June the claimant informed him she was pregnant and that was the first time he heard that. He informed the claimant's manager and the human resource department of that development. Together with that manager these two gentlemen met the claimant on 23 June where the manager gave her two weeks notice of the termination of her employment. Three days later the witness signed a letter to the claimant confirming her dismissal. The reasons for the dismissal were that the client had withdrawn approval for her and the respondent in turn was unable to offer her an alternative position.

### **Determination:**

The Tribunal was of the view that the claimant, because of the questions raised regarding the relevance to her dismissal of her having been pregnant, had the right to have her case heard irrespective of whether or not she had a year's service.

The Tribunal did not get the opportunity to hear from two people who might have given very relevant testimony on behalf of the respondent. The Tribunal was not satisfied that the claimant had had the full benefit of natural justice or that the respondent's procedures (in terminating the claimant's employment) had been without significant flaw. The claimant appeared to have told the respondent of her pregnancy prior to her dismissal. The respondent did not have any witness to rebut the claimant's testimony and establish to the Tribunal that the claimant was wrong to think that her dismissal was wholly or mainly due to her having been pregnant.

Section 33 (a) (ii) of the Maternity Protection Act, 1994, as amended by s.22 of the Maternity Protection (Amendment) Act, 2004, provides that where, in any proceedings, facts are established by an employee from which it may be presumed that there has been discrimination (or indirect discrimination) in relation to him or her it shall be for the employer to prove the contrary.

The respondent contended that it had substantial grounds to dismiss the claimant. However, it did not sufficiently have regard to the claimant's right to fair procedures. It did not satisfactorily follow its own procedures, give warnings or give consideration to redeployment of the claimant rather than outright dismissal. All that was manifestly clear was that the claimant had been pregnant and that the respondent opted for the ultimate sanction of dismissal.

Therefore, unanimously deciding that it had jurisdiction to hear this case, the Tribunal unanimously allows the claim under the Unfair Dismissals Acts, 1977 to 2007, and considering compensation to be the appropriate redress in all the circumstances, awards the claimant the sum of €35,000.00 (thirty-five thousand euro) under the said legislation.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)