

## EMPLOYMENT APPEALS TRIBUNAL

**APPEAL(S) OF:**  
EMPLOYEE  
- *claimant*

**CASE NO.**  
RP202/2011  
MN165/2011

against

EMPLOYER  
- *respondent*

under

### **REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr J. Browne  
Mr F. Dorgan

heard this appeal at Waterford on 9th March 2012

Representation:

Appellant: Mr. David Burke, David Burke & Co, Solicitors, 24 Mary Street, Dungarvan,  
Co Waterford

Respondent: Peninsula Business Services (Ireland) Limited, Unit 3, Ground Floor, Block S,  
East Point Business Park, Dublin 3

The decision of the Tribunal was as follows:

In November 2004 the appellant commenced employment in a juice bar for the respondent. Evidence was heard from the appellant and the area manager gave evidence on behalf of the respondent.

The appellant was on maternity leave up until September 2008. When she returned to work she was out sick intermittently with anxiety and depression. In evidence the appellant said when she went to go back to work she was told that she would be better off staying on the “sick” until hours of work were available to her. The appellant’s contract of employment was opened to the Tribunal which states “A certificate from a qualified medical practitioner must be submitted on the third day of continuous absence and on a weekly basis thereafter.”

A series of correspondence from the respondent to the appellant was referred to in evidence. It

was the respondents position they had received no response or satisfactory response to any of these letters. While the appellant maintained that she would have contacted the respondent on foot of these letters. These letters were sent by registered post to the appellant and the delivery notices were produced into evidence.

The letters from the respondent to the appellant were as follows:

- 28<sup>th</sup> April 2009 invitation to the appellant to attend a formal meeting “re long term sickness”
- 13<sup>th</sup> May 2009 in respect of “Unexcused Absence” the claimant was certified sick up to 1<sup>st</sup> May 2009.
- 4<sup>th</sup> June 2009 stating that her most recent sick cert expired on the 28<sup>th</sup> May 2009.
- 7<sup>th</sup> August 2009 stating that “you have been on unexcused absence from the 9<sup>th</sup> July 2009 to date”.
- 10<sup>th</sup> September 2009 reiterating that the appellant was on unexcused absence since 9<sup>th</sup> July 2009
- 16<sup>th</sup> October 2009 the appellant had submitted some sick certs but some of her period of absence were still uncertified
- 15<sup>th</sup> December 2009 the respondent stating that they had received no sick certs to excuse her absence. This letter also informs the claimant that if she does not make contact within 7 working days they will have no choice but to forward her P45
- 15<sup>th</sup> January 2010 the appellant had not responded to their letter of the 15<sup>th</sup> December 2009 therefore they had made the decision to dismiss her as the situation could not continue. They would be forwarding her P45 and any money due to her.

The appellant in her evidence confirmed she had received all the letters with the exception of two, the letter dated 10<sup>th</sup> September 2009 and the letter of dismissal of the 15<sup>th</sup> January 2010. She maintained that on receipt of these letters she had tried contacting the respondent in the Dublin office and had left voicemails. The area manager explained that the last time he had contact with the claimant was when he called out to the appellants house in April 2009 as she could not make it to the shop for the meeting regarding her long term sickness. He had a discussion for a few minutes with her on this day and then another visitor came to her house. He was left alone while the appellant spoke with this visitor, as he could hear the conversation he left the house. He returned a while later and the appellant informed him that she would be submitting another sick cert. He had received no response by telephone or letter from the appellant to any of the letters he subsequently sent her. No other employee within the company had reported to receiving any contact from the appellant.

**Determination**

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal finds that the appellant was in breach of her contract of employment by not submitting sick certs as required. The appellant did not engage with her employer and it was not unreasonable for the respondent to dismiss her in the circumstances. Accordingly as the appellant’s employment was terminated due to frustration of her contract the Tribunal dismisses her appeal under the Redundancy Payments Acts 1967 to 2007 and her claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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