

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE
- *claimant*

CASE NO.
MN1704/2010
UD1750/2010

against
EMPLOYER
- *respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney BL

Members: Mr T. Gill
Ms H. Murphy

heard this claim at Galway on 26th March 2012

Representation:

Claimant(s) : Ms Gemma Forde, Charles Foley, Solicitors, Market Square,
Gort, Co Galway

Respondent(s) : Ms. Deirdre Browne BL instructed by Geoffrey Browne & Co, Solicitors, 24
Dock Road, Galway

Claimant's Case

The claimant gave evidence that she worked as a care assistant for the respondent since September 2008. She became pregnant and informed the respondent of this in March 2009. During her pregnancy she was absent from work on sick leave from June 2009 and submitted medical certificates for her absence. She was on maternity leave from 9 November 2009 until 10 May 2010. On 26 April 2010 she attended a meeting with (S) from the respondent company. She informed (S) that she had suffered an injury to her coccyx bone during childbirth and would be returning to work as soon as her doctor confirmed that she was fit to return to work. She did not confirm in writing to her employer that she would be returning to work but told (S) at the meeting on 26 April 2010 that she wanted to return to work. She denied that she told (S) that she would not be coming back to work. Following the conclusion of her maternity leave she was in receipt of illness benefit until December 2010.

Following the meeting of 26 April 2010 there was no further contact between herself and the respondent until 30 June 2010 when she received her P45 and final payslip. She also received her holiday and public holiday entitlements. On receipt of the P45 she believed that she had been fired by (S) and believed that (S) had made a mistake in firing her. She did not make any further attempts to contact her employer as she understood that she had been fired. She did not ask her employer for her job back as it would have felt strange returning to a job from which she had been fired. Her illness benefits payments ceased in December 2010 and since then she has sought alternative employment but has not secured alternative employment to date.

Respondent's Case

(S) gave evidence that she is employed as a manageress by the respondent. She gave evidence that the claimant was due to return from maternity leave in May 2010. In April 2010 she made a number of unsuccessful attempts to contact the claimant, as she was anxious to find out if the claimant was returning to work. She then made contact with the claimant through her (the claimant's) mother-in-law who also worked for the respondent and a meeting was arranged for early May 2010. She could not recall the exact date of that meeting. She gave evidence that, at that meeting the claimant informed her that she was unable to return to work as she had suffered a fracture in her lower back. She told the Tribunal that the claimant had informed her that her doctor had recommended that she did not return to work, due to the physical nature of the work involved. She asked the claimant for a copy of the doctor's letter for her records. She did not fire the claimant and her understanding was that the claimant was not returning to work. She waited for a period of time but she did not receive a copy of the doctor's letter that she had requested. There was no further contact from the claimant and she issued her with her P45 and final payslip in June 2010 as she believed that the claimant was not returning to work.

Determination

The Tribunal is satisfied on the basis of the evidence adduced that the claimant failed to discharge the appropriate level of proof that a dismissal occurred. Accordingly the claims under the Unfair Dismissals Acts 1977 to 2007 and the Minimum Notice and Terms of Employment Acts 1973 to 2005 fail and are hereby dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

