

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE *-claimant*

CASE NO.
UD2153/2010

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

EMPLOYER *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C. Corcoran B.L.

Members: Mr D. Peakin
Mr J. Jordan

heard this appeal at Dublin on 13th March 2012

Representation:

Appellant: Mr Noel Reilly, Gaffney Halligan & Company, Solicitors,
Artane Roundabout, Malahide Road, Dublin 5

Respondent: Mr. Frank Drumm B.L. instructed by,
Downes Solicitors, 3 Mount Street Crescent, Dublin 2

This case came before the Tribunal by way of an employee appeal of the Rights Commissioner Recommendation ref: r-089907-ud-10/TB.

Respondent's Case

A partner in the respondent firm (DmcC) gave evidence. The respondent's is an accounting firm that specialises in providing services to the licenced trade, 60% of their clientele would be licenced premises. The respondent is divided into two separate areas; bookkeeping and audit. There is a total of 20 staff including the partners. DmcC gave evidence of the decrease in the volume of work and the requirement for redundancies.

The claimant went on maternity leave in February 2009. In response to a request for a meeting on the 6th of July the claimant responded saying she was due to return on the 10th of August 2009 that she was currently in China. On the 7th of July the respondent wrote to the claimant informing her that her position was being made redundant on completion of her maternity leave, and that the respondent wanted to give her as much notice as possible in order for her to make arrangements for after her maternity leave expired. The claimant then requested that she avail

of the additional 16 weeks unpaid maternity leave; the respondent refused this request as she had already been notified that her position would be made redundant.

A meeting was held on the 12th of August where the claimant accepted that there was no work available. This was not a grievance meeting but to explain the situation within the respondent more fully. This was not a grievance situation so the grievance and disciplinary procedure was not followed. The position advertised on the 10th of July 2009 was for a bookkeeper, the claimant is a qualified ACCA accountant with 3 years' experience, although she said she would take a pay cut this was not a suitable position for her. The position was not offered to the claimant as when the respondent said to her that if a client has a bookkeeper position available they'll keep her in mind, 'she looked at me in disdain at the prospect as she was an accountant'. In an e-mail to the claimant the respondent made reference to staff 'passing through' this was in relation to the large volume of trainee accountants working for the respondent.

Claimant's Case

The claimant's employment was uneventful until she e-mailed the respondent informing them of her intention to return to work after her maternity leave. On receipt of the letter making her position redundant the claimant requested unpaid leave while she looked for another job; this request was refused by e-mail which stated, *'most people in this office are only passing through. You need to move on as there is nothing further we can offer you.'*

The claimant had not received her P45 by the 21st of August so e-mailed the respondent stating she was returning to work the following Monday. The following Monday she was not granted access to the office but was issued her P45. As the claimant required a work permit to work she was aware that it would be difficult to find alternative employment. The claimant would have accepted the bookkeeper role as advertised.

Determination

Having carefully considered all the evidence adduced the Tribunal find that the respondent should have offered the claimant the alternative position as advertised. The Tribunal also find that the respondent should not have affected the claimant's redundancy while she was on maternity leave and the procedures used in effecting the redundancy were flawed.

The Tribunal find that the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and awards the claimant €40,000.00 in compensation therefore varying the Rights Commissioner Recommendation ref: r-089907-ud-10/TB.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)