

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE
WT833/2010

UD1870/2010

against
EMPLOYER

under

**ORGANISATION OF WORKING TIME ACT, 1997
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. F. Murphy
Members: Mr. D. Morrison
Mr. M. McGarry

heard this claim at Castlebar on 7th March 2012

Representation:

Claimant:

Ms Hilary O'Connor, Maurice Leahy Wade & Co, Solicitors,
Archway House, The Plaza, Swords, Co Dublin

Respondent:

Mr. Gary Mulchrone, Gilvarry & Associates, Solicitors,
Unit 9, N5 Business Retail Park, Moneen Road, Castlebar, Co Mayo

Respondent's case

The respondent took over a vacant filling station /shop and re-opened it in September 2009. The claimant and others were taken on 5th September 2009 to staff and run the business. The Respondent did not take a hands-on-approach as he was also running a plumbing business.

After a short time in business it became apparent that there needed to be cuts made as the respondent had already had to inject a further €38,000 into the venture in order to cover costs, including wages. As a result of this the respondent decided to let the claimant go and his wife came to work in the shop without payment of wages.

The decision to make the claimant redundant was made based upon her being surplus to

requirement. The respondent was aware that the claimant was pregnant at the time of dismissal, although he could not recollect her telling him so. The fact that she was pregnant had nothing to do with the decision to make her redundant and other employees have since become pregnant and remained in his employment. The respondent also denied that his attitude towards the claimant changed once he knew she was pregnant.

Claimant's case

At the outset the claimant withdrew her claim under the Organisation of Working Time Act, 1997.

The claimant commenced employment with the respondent on 4th September 2009 and helped prepare for opening a few days later. At that stage another employee and the owner's wife worked in the shop and one other person worked in the office.

The claimant stated that she informed the owner that she was pregnant and that his reaction was "well how will you be fixed to work", another member of staff said to him "don't you mean congratulations". After this the claimant noticed a change in attitude by the owner towards her. The claimant was made redundant on 4th March 2010 and contended that this was because she was pregnant.

Another employee had left on or about the 10th February 2010 and was taken back to replace the claimant. However, the owner denied this and stated that the other employee had not left but was absent from work during that period.

Determination

The Tribunal carefully considered the evidence adduced at the hearing. The witnesses called on behalf of the claimant failed to corroborate the claim made by the claimant. The respondent gave evidence that other women were employed there and were not dismissed when they became pregnant.

The Tribunal is not satisfied that the claimant was dismissed by reason of her being pregnant and therefore the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

It is noted that the claim under the Organisation of Working Time Act, 1997 was withdrawn at the outset.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)