

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE
- *claimant*

CASE NO.
UD287/2011
MN280/2011

Against

EMPLOYER
- *respondent*

Under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms O. Madden B.L.
Members: Mr. M. Flood
Mr G. Whyte

heard this claim at Dublin on 1st June 2012

Representation:

Claimant
Spelman Callaghan, Solicitors, Corner House, Main Street,
Clondalkin, Dublin 22

Respondent(s) :
Paul A. Ferris & Co, Solicitors, Suite 227, The Capel Buildings,
Mary's Abbey, Dublin 7

Determination

The respondent (MT) gave evidence of employing the claimant for the period 2003 to 2006 and the claimant had left due to pregnancy and the birth of her child. In 2008 a position of manger arose and MT having consulted with her business partner decided the claimant would be suitable for the position and she arranged to meet her in April 2008. She commenced in the full time manager role in June 2008. Pay and conditions were agreed and a contract of employment put in place. The duties of the claimant included childcare, sales and day to day running of the facility. The role was a very hands on job. MT noticed the claimant was absent one day per month and she discussed this with her in December 2009. During that time the respondent also offered to help her in the role as it was a difficult and stressful job at times.

At the end of June 2010 the claimant was hospitalised having suffered a miscarriage and

indicated she would not be back at work that week. The claimant subsequently contacted ST (respondent) by text advising that she would not be back that week. The respondent received a note stating she had not returned to full health and a sick certificate for the period in and around 28 July 2010.

In September 2010 MT received a letter from the claimant outlining her upset at the fact that she had discussed her health issues with a third party. MT arranged to meet the claimant around the 7th or 8th September and at the meeting apologised saying she had not meant to cause any upset or hurt. MT had no knowledge of the claimant's pregnancy until she was informed of the miscarriage. Returning to work was not discussed at that meeting. A further meeting was had at the end of September where the claimant had indicated her circumstances had changed and she would not be in a position to work full time. She indicated she wanted less hours and her daughter would be starting school. The respondent told her she would examine the options and no decision was made at the meeting. Both respondents met with her on the 1 October 2010 and told her they needed a full time manager and could not reduce her hours. The claimant asked if she could work in another area from 9.30am to 12.30pm but there was no position with those hours. The meeting concluded with the respondent agreeing to look at all options and get back to the claimant.

A family bereavement followed leading to a delay in getting back in contact with the claimant. MT took responsibility for the delay and believes this contributed to the breakdown in the relationship between them. A letter from the claimant's solicitor followed. MT told the Tribunal the claimant never indicated she was willing to return to her full time role. With regard to not furnishing references MT stated she believed matters would be resolved and the claimant would return. She wanted the claimant to return to the post.

The claimant (SG) gave evidence of suffering a miscarriage on the 30 June 2010 and phoning the respondent to explain she would not be at work as she was hospitalised. Regular hospital visits followed due to further medical complications. Some time passed and test results were not available until the end of September. When meeting a third party out at a date in August she was asked about her miscarriage and felt let down and hurt that MT had discussed her health issues with another individual. Following writing a letter to MT a meeting was arranged. MT apologised and they spoke about matters other than returning to work. At a second meeting the claimant said she could return to work on a part time basis until she got back on her feet fully and MT agreed to discuss with ST. She wished to return part time only for a temporary period. The claimant said she met again with MT and ST on the 1 October 2010 and they said they could not afford to keep her on and would look at redundancy options. She went on to say that MT indicated she was taking over the manager role and the recession was making times difficult. There was no offer of part time hours. She told the Tribunal she was ready to return to work full time and her daughter commencing school was not an issue as she had put childcare in place and her mother was assisting. No cut in pay was offered as an alternative. She was shocked at the outcome of the meeting as she understood the meeting was to make arrangements for her return to work. She left the meeting believing her employment was finished.

The claimant denied requesting specific working hours to facilitate her daughter commencing school. She acknowledged requesting part time hours but had the respondent not agreed was prepared to return full time.

The Tribunal carefully considered the evidence adduced at the hearing and are not satisfied that a genuine dismissal took place. There was no evidence before the Tribunal to indicate that after the meeting which was held with the claimant on the 1 October 2010 that the claimant's job was gone. In considering the evidence and in particular the letter of the 1 November 2010 it is clear the respondents intended that she would return to work in accordance with the terms of her contract.

Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fail and are therefore dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)