

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD584/2011

Against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C. Corcoran B.L.

Members: Mr J. O'Neill
Mr C. Ryan

heard this claim at Dublin on 27th July 2012

Representation:

Claimant: Mr Niall Bass, Keans, Solicitors, 2 Upper Pembroke Street, Dublin 2

Respondent: In person

Claimant's Case

The claimant CM first worked for the respondent in 2003 for two and a half years. She moved on and left the respondent's business on good terms. She became unemployed in February of 2010 and became aware of a position at the respondent business in May. An interview was arranged, she was successful and began work for them on Monday 10th May 2010. CM had a good relationship with the respondent, she did miss some days at work because of personal issues but found her employer very understanding. She felt she may have missed eight or nine days in total.

On 29th October 2010 she woke up feeling bad, her partner rang SJ (director) who was abrupt with him. CM returned to work on Monday morning 1st November, she went in early to speak to SJ because she wanted to tell him she was pregnant. He told her it wasn't working out, she had missed a lot of time and had she let him down again on the previous Friday. He told her he would ring her when things quietened down but he never made contact again. She received her P45 in the post.

Under cross examination CM said she never received any warnings, she was not aware her job was advertised on the Friday on a FAS website, This cannot now be confirmed as it is too long ago. An announcement of her pregnancy would have been on Facebook by the Friday lunchtime.

Respondent's Case

SJ a director gave evidence that the claimant had previously worked for the respondent company and when she applied for the job they were delighted to have her back. On her first week back she missed the Thursday and the following two weeks she missed one day in each of them. Business was hectic, he was doing the job of four people himself and needed extra support.

In CM's first three months she missed eight days, there were only three consecutive weeks that she showed up every day. In August she took three days off one week and four days off the next, staff would say "I wonder if she will be in today". Either her mother, her father or her boyfriend would ring and every time she returned she had a story. SJ said it was untrue to suggest he had never talked to her about her absences, she knew how pressurised he was and every morning she came in he spoke to her about it.

SJ spoke to his business partner and they placed an advertisement on the FAS website when she didn't show up for work on the Friday. When CM showed up on the Monday morning he was ready to say his piece, she said "I have something to tell you" and he said "no I have something to tell you first, I'm letting you go, I can't do this anymore". Her reply was "I'm pregnant".

He had no issue with maternity leave and the company have also given paternity leave. He also stated that he was unaware of any announcement on Facebook.

Under cross examination SJ said that it was only a small business and he didn't have any records of the absenteeism. He placed the advertisement with FAS on the Friday so he would go ahead with it and not change his mind when she next came into work.

Determination

The Tribunal heard contradictory evidence from the parties. The claimant says she was unfairly dismissed in circumstances wherein her employer became aware of her pregnancy and the respondent claims that the dismissal was because of claimants continuous failure to show up for work. The Tribunal notes the absence of any attendance records from the respondent and prefers the evidence of CM in relation to the dismissal.

In all the circumstances of the case the Tribunal awards the claimant €8000 under the Unfair Dismissals Acts, 1977 to 2007

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

