

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD926/2011

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony BL

Members: Mr. P. Casey
Mr. D. McEvoy

heard this claim in Cork on 25 September 2012

Representation:

Claimant(s):
No legal or trade union representation

Respondent(s):
Ms. Maeve Cahill, IBEC,
Knockrea House, Douglas Road, Cork

The determination of the Tribunal was as follows:-

Preliminary Issue

The respondent claimed that the claim had been lodged outside the prescribed statutory six-month period. The fact of dismissal was in dispute in that it was contended by the

respondent that the claimant had not been dismissed by the respondent from her former position but that she had chosen to resign of her own volition such that she had no claim under unfair dismissal legislation. The claimant maintained that her employment had ended on 22 October 2010.

Summary of Evidence

The claimant went on sick leave initially requiring six weeks leave but two weeks later she again contacted the HR manager (HRM) requiring six to nine months leave to start chemotherapy and HRM agreed to this.

The claimant's position was that after a number of weeks her Social Welfare credits ran out and she needed her P45 and a final letter in order to receive her entitlements. The claimant maintained that HRM agreed with her that, following her treatment, she would return her P45 and resume her work in the company "perhaps not in (her) previous location but in some department". It was the respondent's position that shortly thereafter HRM received a call from the claimant informing her that she was looking into her Social Welfare entitlements and that she would have to resign in order to receive them. HRM told the claimant that she did not want to lose her but that if she resigned she could not keep her job open for her but that on recovery she could re-apply for employment and would be considered.

On 20 March 2010 the claimant wrote to HRM as follow:

"Regrettably, I wish to advise that I would like to terminate my employment with [the respondent]

...

With the passing of time and my return to good health I would hope to reapply for a position with [the respondent]."

It was further the claimant's position that following her treatment, she contacted management to discuss her return to work but was told that she was no longer a member of staff and it was made very clear to her that she was not returning but that she could reapply. Following contact with the general manager, seven job applications and two interviews with a concession company she had not been reinstated by the respondent and on around 14th April 2011 she realised that she was being "black-balled" by the respondent. She lodged her claim for unfair dismissal with the Tribunal on 15 April 2011. In cross-examination the claimant accepted that it was reasonable for the respondent to consider the contents of her letter of 20 March 2010 to be a termination of her contract of employment on that date and that it was her decision to resign. She further agreed that HRM had neither told her to resign nor coached her in the writing of the letter of 20 March 2010.

Determination:

Having considered the parties' submissions, evidence and in particular the claimant's evidence in cross-examination the Tribunal is satisfied that the claimant's letter of 20 March 2010 was a letter of resignation from her employment with the respondent. As the employment ended

nMarch 2010 the claim under the Unfair Dismissals Acts 1977 to 2007 is out of time. In anyevent, even if the claim had been lodged in time, because this was a resignation and not adissmissal the Tribunal would not have had jurisdiction to hear the claim.

Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007, is dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)