

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD768/2011
MN833/2011

Against

EMPLOYER

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 M. Levey B.L.

Members: Mr A. O'Mara
Mr T. Brady

heard this claim at Dublin on 14th September 2012

Representation:

Claimant: Mr Patrick McMahon, B P O'Reilly & Co, Solicitors,
Coric House, Tallaght Village, Dublin 24

Respondent: In person

The determination of the Tribunal was as follows:-

Respondent's case:

The Tribunal heard evidence from the director (FP) of the respondent company. He said that the business was busy coming up to Christmas 2010 and he needed someone to provide assistance to S who worked in his office. He placed an advertisement with FAS looking for a junior person and S advised him that she had a friend who might be interested in the position. The claimant began work on 2nd November 2010. S took her under her wing and no interview took place. The first incident that occurred with the claimant was when she was swinging on a chair in the office. She fell off and hurt herself, she took time off because of her injury. His accountant also advised him that she had

trouble getting dockets in numerical order. FP felt that the claimant was all over the place, she was on a three month trial and he decided to terminate her employment after Christmas. He did not know she was pregnant and he didn't keep her in employment because she was not suitable for the job. FP asked S to let her know that he was unhappy with her work and she texted the claimant from his phone. He regretted the way he handled things but the claimant was not the person for the job.

Under cross examination FP said that S would not be in attendance, she was torn between loyalty to her former employer and her friend. He conceded that the claimant had no contract of employment but said that S would have advised her that the job was for a trial period. There was no evidence of any warnings but said he would have spoken to her about her attendance/performance on occasion. He had no recollection of the claimant's mother calling him to say the claimant was in hospital or that she was pregnant.

Claimant's case:

The claimant gave evidence that she handed in her notice with her former employer when S advised her of the position with the respondent. She was never advised it was for a trial period. Nobody ever complained about her work, she did have an accident with the chair but had provided medical certificates at the time. On 31st December she discovered she was pregnant and on the morning of 4th January she attended her doctor because she was feeling unwell. He sent her to hospital where she remained overnight. On 5th January her mother telephoned FP to advise him of the situation, he assured her that everything was ok. That evening she received a text message from him saying she was dismissed as he needed someone who is "here all the time".

Under cross examination the claimant said that she was not present when her mother made the phone call. She has been on benefit since she was dismissed. No evidence of mitigation was provided but the claimant said she had contacted her former employer to try and get work.

The claimant's mother gave evidence that she telephoned FP on 5th January and advised him of the situation, he seemed nice on the phone and reassured her that it was ok. Her daughter got the text dismissing her on the same evening. She said that the claimant has been constantly looking for work since her date of dismissal.

Determination:

The Tribunal heard contradictory evidence from the parties. The claimant was dismissed by text message on or about the 5th January. The respondent acknowledged this was the case and stated that the situation was mishandled in that regard but the reality was, she wasn't the person for the job and that was the reason for her dismissal. He denies receiving a call from the claimant's mother regarding the claimant's pregnancy and being absent from work on 5th January. On balance the Tribunal finds that it was too much of a coincidence that the claimant received the text on 5th January dismissing her, the very date her mother rang the respondent (which is denied by respondent) regarding her absence from work due to her being pregnant. Thus the claimant's dismissal was unfair. The claimant's evidence on mitigation was vague with no documentary evidence provided. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007, succeeds and the Tribunal awards the claimant compensation in the sum of €7,000.

The Tribunal accepts that the claimant was dismissed on the 5th January 2011 and therefore did not have sufficient service with the named respondent to make a claim under the Minimum Notice and

Terms of Employment Acts 1973 to 2005. Therefore this claim is dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)