

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

EMPLOYEE

CASE NO.

UD1735/2011

WT693/2011

MN1797/2011

against

EMPLOYER

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. S. Mahon
Members: Mr. P. Pierson
Mr. O. Nulty

heard this claim at Longford on 21st February 2013

Representation:

Claimant:
Respondent:

Respondent's case

The respondent is a book maker operating a single betting shop. The claimant commenced employment in the shop on 11th May 2011 and her employment terminated on 29th August 2011. The witness for the respondent (JK), who is the manager of the respondent, was the person who hired the claimant and he told her that it was a part time temporary job that would last until September 2011. However the claimant made a number of errors and JK decided to terminate her employment earlier than originally anticipated. JK told the claimant on 4th August 2011 that he was letting her go in September but she made another error on Saturday 20th August 2011 and JK told her on Monday 22nd August that he was letting her go at the end of that week. The claimant was paid up to 29th August 2011.

JK was not aware that the claimant was pregnant until she told him so on 22nd August 2011 and his decision to dismiss her had nothing to do with the claimant's pregnancy. The respondent maintained that the claimant was paid at least her statutory minimum notice and was not dismissed due to her pregnancy.

Claimant's case

The claimant was not given a contract of employment by the respondent and as far as she was concerned she was employed on a part time, permanent basis from 11th May 2011 and did not expect to be let go in September 2011.

It was agreed that the claimant was told on 4th August 2011 that her employment was to end in September 2011. However the claimant told the Tribunal that she had phoned both the owner and JK, before arriving to work on 4th August 2011 and informed them that she was pregnant.

The claimant contended that she was dismissed because she was pregnant. Furthermore the claimant claimed that the notice given to her on 4th August 2011 was nullified by the fact that she was let go earlier than indicated at the time of this notice.

Determination

It is noted by the Tribunal that the claim under the Organisation of Working Time Act, 1997 was withdrawn by the claimant at the outset of the hearing.

The claimant was entitled to notice of one week on termination of her employment. It was common case that the claimant was given notice on 4th August 2011 that her employment was to be terminated in September 2011. According to the claimant's P45 her employment ended on 29th August 2011. The Tribunal is satisfied that the claimant received at least her minimum statutory notice and the fact that the notice given was less than originally indicated by the respondent did not nullify this notice. Therefore the Tribunal finds that the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails.

The claimant contended that she was dismissed from her employment because she was pregnant and therefore she was exempt from the requirement to have at least twelve months service with the respondent in order to have a claim for unfair dismissal heard by the Tribunal.

The Tribunal carefully considered the evidence adduced at the hearing. There was a clear conflict of evidence in respect of when the claimant told the respondent she was pregnant. On the one hand the claimantsaid that she informed the respondent before she was given notice of termination of employment and on the other hand the manager of the respondent said that he was not aware of the claimant's pregnancy until aftershe was given her notice. The manager also stated that the claimant was employed on a temporary basis andwas due to finish up in September. This period was shortened when the manager became dissatisfied withthe claimant's performance. However the claimant stated that she was never told that the job was temporary.

The Tribunal preferred the evidence of the respondent and finds that the claimant was not dismissed as a result of being pregnant. Accordingly the claimant's claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____ (CHAIRMAN)