

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD501/2011

against

EMPLOYER
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Wallace

Members: Mr G. Andrews
Mr J. Flavin

heard this claim in Limerick on 22 November 2012 and 11 March 2013

Representation:

Claimant:

Respondent:

Summary of evidence

It was alleged that the claimant, a childcare worker, had been unfairly dismissed after an employment from June 2008 to 11 January 2011. It was stated that the claimant had been out sick on medical certificates but that PW (the respondent's owner) had been threatening to terminate the claimant's employment from when the claimant first went out sick. The claimant had cardiac problems for which she was hospitalised. The claimant was also on medication for angina and gastric stomach problems and other issues. The claimant believed that she had been unfairly victimised once she went out sick.

It was submitted that PW had insisted that the claimant change a C.T. scan appointment due to persistent headaches and recent family history. It was contended that the claimant had had to change because of how intimidated she felt.

It was alleged that, any time the claimant needed to see her medical people, the claimant's employer "went mad" because it did not suit her. The allegation was made that the claimant's employer had not cared about the health problems of the claimant or of anyone else.

On behalf of the respondent it was stated that the claimant had been absent from work on the grounds of illness from 6 September 2010. The respondent had sought an approximate return to work date from the claimant when she had been absent for some ten weeks. It was pointed out to the claimant on several occasions that it was extremely difficult to cover long staff absences because of the necessity of complying with the correct adult/child ratios at the crèche and hence the reason for seeking an approximate return-to-work date from her. The claimant's doctor stated that she was unsure of a return-to-work date for the claimant.

An independent medical examination by JS (occupational health physician) was arranged for the claimant on 18 November 2010. JS reported that the claimant was fit to return to work. The claimant was asked to return to work on 13 December 2010 and to contact the respondent if she had any difficulties about doing so. The claimant was informed that JS had certified her as being fit to return to work.

The claimant failed to return to work on 13 December 2010 or to make any contact whatsoever with the respondent. The respondent made numerous unsuccessful attempts to contact the claimant by telephone and so kept informing the claimant in writing (on 10 November 2010, 29 November 2010 and 9 December 2010).

The respondent had no option but to assume that the claimant no longer wished to continue with her employment and a formal notice of dismissal was issued on 11 January 2011 in the absence of any communication from the claimant.

It was the claimant's case that she had no recollection of signing a contract or induction document. When produced before the Tribunal she said that the signatures were not hers. The claimant's husband advised the respondent when she first went out sick, the next time they wanted information she went to the office herself and told the respondent she would let them know when she was fit to return. On another occasion when she was requested to ring her employer she asked her brother to do so, as she was too ill. Asked about the respondent being unable to contact her by telephone she stated "that maybe the case" because she had trouble with her telephone line.

The claimant had an occupation medical review and was deemed fit to return to work on 13th December but stated that she failed to do so because she was still very sick at that time. She is currently in receipt of invalidity pension.

Determination:

The Tribunal heard conflicting evidence as to the contact, or lack of contact between the parties.

The Claimant did not give the Respondent any firm commitment when she would have been able to return to work. The Respondent had praised the Claimant's work ethic and her suitability for her position but could not allow the Claimant's absence continue indefinitely when she failed to communicate the progress of her condition and her prospective return date. In evidence the Claimant confirmed that due to her medical condition she had not been able to work since and would not be in a position to return to work in the future. The Respondent's business is work intensive where a high degree of regulation applies and long term absences cause serious difficulties where certainty is needed. In consequence, the Tribunal prefers the evidence of the Respondent in this regard. While the Tribunal acknowledges that the claimant had an illness there was an obligation to keep the Respondent updated of her progress and in this she failed. Accordingly, the claims under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____
(CHAIRMAN)

