

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYER - *appellant*

CASE NO.

UD929/2011

against the recommendation of the Rights Commissioner in the case of:

EMPLOYEE - *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms C. Egan B L

Members: Mr. W. O'Carroll  
Ms H. Henry

heard this appeal at Galway on 17th January 2013

Representation:

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Appellant(s) :

Respondent(s) :

This case came before the Tribunal by way of an appeal by the employer (appellant) against the recommendation/decision of the Rights Commissioner (r-095174-ud-10) under the Unfair Dismissals Acts 1977 to 2007.

#### **Respondent's Case**

The respondent gave evidence that she commenced working for the appellant company in September 2008. She was employed as an office administrator carrying out general office administration duties. Following her appointment she settled into her position very quickly and never received any complaints about her work performance. She was made permanent in her position in December 2009. She then began working two days from home and three days per week in the office with the agreement of her employer (DH), the Managing Director of the appellant company.

In January/February 2010 all employees were put on a three day week and salaries were reduced by 20%. The respondent was due to go on maternity leave on 28 February 2010 but commenced this leave early on 22 February 2010 for medical reasons. She gave evidence that

she made (DH) aware that she was willing to return early from her maternity leave and that (DH) told her that he did not know if they “would still be there” for her to return to after her maternity leave. She gave evidence that he told her to telephone the office and “if somebody else answered the phone she would know that they were gone”.

The respondent was willing to return to work in April 2010 and e-mailed (DH) on 21 and 26 April 2010 enquiring if her job was available and if she could return to work. She did not receive a reply to these e-mails and she then telephoned (DH) on 30 April 2010. She told the Tribunal that (DH) apologised for not getting back to her and said that her job was no longer there for her. She received her P45 on 13 May 2010 and did not resign from her position. She denied that she gave up her job. She had no recollection of speaking with (DH) by telephone in March 2010. She gave further evidence to the Tribunal of her efforts to secure alternative employment since the termination of her employment with the appellant company. She did some voluntary work in 2011 and has now returned to college.

### **Appellant’s Case**

(DH) gave evidence that he is the Managing Director of the appellant company which employs 9 people. He interviewed the respondent and offered her employment in September 2008. She worked in administration and he had no issues with her work performance. He invested in training for her as he did with other employees. In late 2009/early 2010 the business experienced cash flow problems due to a difficulty with one multi-national customer. This particular issue consumed a lot of time and resources, however the business was still “a sound credible business”. It was necessary for the company “to tighten its belt” temporarily and all staff were put on a three day week in January/February 2010 and salaries were reduced by 20%. This was with the agreement of all staff and was necessary in order for the business to survive.

The respondent went on maternity leave in February 2010 and the witness gave evidence that he certainly hoped that the company would still be in business when she returned from her maternity leave. He gave evidence that he had a general phone conversation with the respondent in March 2010 during which she debated about looking for work in the Nenagh/Limerick area. She had returned to live in that area from Galway at the end of 2009 and was working two days per week from home prior to going on maternity leave. He gave evidence that he had subsumed some of her work while she was on maternity leave and an outside accountancy firm worked on the bookkeeping twice monthly.

In April 2010 he received two e-mails from the respondent. He felt the e-mails were “somewhat strangely put” as he had spoken with her in March. He then had a telephone conversation with her on 30 April 2010 and gave evidence that she stated that she was looking for jobs closer to her home and wanted her P45. He issued her with a P45 and gave evidence that he did not dismiss her. The witness states that he has never dismissed any employees. He had expected the respondent to return from her maternity leave in September 2010 and could not recall the respondent ever offering to return early from her maternity leave. He understood that she was on maternity leave for six months and never had a discussion with her concerning returning early from maternity leave. He accepted that he did not reply to her e-mails of 21 and 26 April 2010 and did not put it in writing that her job was still available for her. He understood that that she was going to take her full six months maternity leave. The respondent’s position has not been replaced and a cost accountant now does the accounts.

### **Determination**

The Tribunal considered all the evidence and submissions in this case. There was a clear conflict of evidence between the parties in relation to the termination of the claimant's employment and in particular concerning the issuing of her P45 form. There was an onus on the appellant company to inform the respondent in writing that her job was available for her to return to from her maternity leave. The company failed to discharge this onus and crucially did not reply to the respondent's e-mails of 21 and 26 April 2010.

In those circumstances the Tribunal unanimously finds that the claimant was unfairly dismissed under the Unfair Dismissals Acts. The Tribunal dismisses the appeal and upholds the recommendation/decision of the Rights Commissioner.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

