

The Equality Tribunal

EMPLOYMENT EQUALITY ACTS

DECISION NO. DEC-E2014-009

PARTIES

Priscilla Doogan
(Represented by Oliver Costello B.L. instructed by Wilkie & Flanagan
Solicitors)

AND

Newgate Motor Company Limited
(Represented by Patrick O'Brien B.L. instructed by PB Cunningham & Co)

File reference: EE/2011/517
Date of issue: 18 February 2014

HEADNOTES: Employment Equality Acts - Sections 6 & 8 – Gender - Pregnancy – Discriminatory Dismissal

1. DISPUTE

- 1.1. This dispute concerns a claim by Ms Priscilla Doogan that she was discriminated against by Newgate Motor Company Limited on the grounds of gender contrary to section 6 of the Employment Equality Acts in terms of access to employment, conditions of employment and discriminatory dismissal in accordance with section 8 of the Acts and that she was victimised and dismissed in a victimisatory manner contrary to section 74 (2) of the Acts..
- 1.2. The complainant referred claims to the Director of the Equality Tribunal on 28 June 2011 and 22 November 2011 under the Acts. On 10 September 2013, in accordance with his powers under section 75 of the Acts, the Director delegated the case to me, Hugh Lonsdale, an Equality Officer, for investigation, hearing and decision and for the exercise of other relevant functions of the Director under Part VII of the Acts, on which date my investigation commenced. Submissions were received from both sides. In accordance with Section 79(1) of the Acts and as part of my investigation I proceeded to a hearing on 28 November 2013.
- 1.3. At the start of the hearing the complainant confirmed that the only part of the claim that she was pursuing was her claim of discriminatory dismissal and all other claims are withdrawn.

2. COMPLAINANT'S SUBMISSION

- 2.1. The complainant started work for the respondent on 27 September 2010 as a part-time Receptionist/Administrator. On Wednesday, 30 March 2011 she informed the office manager (Ms A) that she was pregnant. They discussed the forms that would have to be completed and the complainant indicated she intended to return to work after her maternity leave. During this conversation she submits that Ms A said they would have to see what the position was with another member of staff who was getting married shortly and would probably want to start a family. The complainant says Ms A came to her the next day and said she should not have discussed the other member of staff.
- 2.2. The complainant submits that on Friday, 1 April 2011 she was told by the Financial Controller (Ms B) that “*the figures were not adding up and we will have to let you go*” or similar words to that effect and she was being made redundant. She was also told that another colleague would be taking over her duties. On the same day the complainant heard the Director take two calls from people looking for jobs and he took their names and numbers. The

complainant became aware around the same time that two other employees were also being dismissed.

- 2.3. The complainant submits that she was dismissed wholly or substantially by reason of her pregnancy and that such dismissal constitutes discrimination on the basis of her gender. The complainant contends that an employer may not dismiss an employee because she is pregnant under the guise of another reason, including redundancy, and cites a number of ECJ rulings to support this. The complainant further submits that she should have been given reasons in writing for the dismissal and relies on EU Directive 92/85 which states at Article 10(2) *“if a worker within the meaning of Article 2, is dismissed during the period referred to in point 1, the employer must cite duly substantiated grounds for her dismissal in writing.”* and cites a number of ECJ cases to support this.

3. RESPONDENT’S SUBMISSION

- 3.1. The respondent confirmed that the complainant started work for them on 27 September 2010 as a part-time Receptionist/Administrator in the mornings from Monday to Friday.
- 3.2. The respondent submits that 2008 and 2009 were the worst ever trading years for them. They experienced a slight improvement in 2010. Following the high car selling months of January, February and March 2011 the respondent was faced with heavy financial losses. The two Directors and the Financial Controller Ms B) met regularly to devise a strategy to cut costs to reduce their losses. It was decided they had to downsize and restructure. It was decided to make three people, who worked in different areas of the business, redundant. They were selected in their areas on the basis of last-in-first-out and were made redundant between 21 March and 11 April 2011.
- 3.3. Ms B met the complainant on Friday, 1 April 2011 to inform her that she was being made redundant. She was advised that the respondent needed to reduce staffing in the administration department by one and she was selected because she was the last person employed. She was also told there were no other jobs available. The respondent submits the complainant said she had heard that someone in the service department was being redundant and she was expecting to be made redundant. The respondent submits that the two Directors and Ms B did not know the complainant was pregnant when they considered who was to be made pregnant. Furthermore, Ms B did not know the complainant was pregnant when she informed her of the redundancy.
- 3.4. The respondent submits that three other employees resigned around the same time. From 11 April to end of August 2011 a further seven male employees were made redundant.

- 3.5. The respondent confirms the complainant informed the office manager (Ms A) she was pregnant on 30 March 2011. However, Ms A did not inform the two Directors or Ms B before the complainant was informed she was being made redundant. Also, Ms A was not party to the discussions regarding the restructuring and downsizing of the business.
- 3.6. The respondent submits that in accordance with Section 7 (2) of the Redundancy Payments Acts 1976, as amended, a genuine redundancy situation existed and no discrimination took place. No one was employed to fill the complainant's role. Another member of staff who already worked on reception in the mornings was asked to work on reception in the mornings as well as carrying out other administrative duties.
- 3.7. The respondent ceased trading on 16 August 2013.

4. FINDINGS & CONCLUSION

- 4.1. I have to decide if the complainant was dismissed in discriminatory manner on the grounds of gender whilst she was pregnant. In reaching my decision I have taken into account all of the submissions, oral and written, made to me in the course of my investigation as well as the evidence presented at the hearing.
- 4.2. In this claim the complainant contends she was dismissed shortly after she told the respondent she was pregnant and that this was a factor in her being chosen for redundancy. The respondent, on the other hand, contends that a genuine redundancy situation existed; where a decision was made to make one person redundant from the administrative area and the complainant was chosen on the last-in first-out basis. Furthermore they say those who made the decision were unaware that the complainant was pregnant either when the decision was made or when she was informed of her redundancy.
- 4.3. The case law of the European Court of Justice (ECJ) is quite clear. In *Dekker v Stichting Vormingscentrum voor Jong Volwassen*, Case C-177/88, it held that unfavourable treatment as a result of or connected to pregnancy is direct discrimination on grounds of gender. It later held in *Brown v Rentokil*, Case C-394/96 that the entire period of pregnancy and maternity leave is a protected period during which both the EU Equal Treatment Directive 76/207 and EU Pregnancy Directive 92/85 prohibit dismissal on grounds of pregnancy and dismissal of a pregnant employee during that period can only occur in exceptional circumstances unrelated to pregnancy or maternity. The Labour Court in 2001 in Determination EED016, A Company and A Worker found that '*no employee can be dismissed while they are pregnant unless there are exceptional circumstances unconnected with the pregnancy and those exceptional circumstances are notified to the employee in writing*'.

- 4.4. Given the financial situation of the respondent from 2008 onwards I understand that the two Directors and Ms B (the Financial Controller) would have been looking into the company's future survival. The overall situation around the time the complainant left their employment is reflected in ten members of staff being made redundant in 2011. I also accept it is quite possible they would not have involved anyone else in those discussions until they had reached decisions. What I cannot accept is that Ms A did not know these discussions were ongoing, particularly when evidence had been given that the first redundancy in 2011 took place on 21 March. Therefore, I find it difficult to believe that the office manager (Ms A) would not have informed Ms B that the complainant was pregnant as soon as she knew and before Ms B told the complainant she was being made redundant. If, however, Ms B did not know, then she accepts that she did know later that day. The respondent took no action to go back to the complainant and explain the reasons for the redundancy in writing.
- 4.5. The respondent produced no hard evidence to support their verbal evidence about the restructuring discussions or to confirm the decisions made about the criteria for selection for redundancy and those chosen. Also, the complainant was given nothing in writing to inform her of her redundancy or the reasons for it.
- 4.6. I conclude that Ms B was, in fact, aware of the complainant's pregnancy before she informed her she was being made redundant. This does not stop the respondent from making the complainant redundant provided "*there are exceptional circumstances unconnected with the pregnancy and those exceptional circumstances are notified to the employee in writing*". The lack of any written evidence from the respondent means they cannot definitively rebut the inference that the complainant's pregnancy was a factor in her selection for redundancy. What is definite is that they did not notify the complainant in writing that she was being made redundant or the reasons for it. Therefore they are unable to show they have complied with their obligations to a pregnant woman and this amounts to direct discrimination on the grounds of gender and her dismissal was discrimination.

5. **DECISION**

- 5.1. I have investigated the above complaint and make the following decision in accordance with section 79 of the Acts that the respondent did dismiss the complainant in a discriminatory manner on the grounds of gender.
- 5.2. I order the respondent to pay the complainant €8,000 in compensation for the discriminatory treatment suffered. This figure represents compensation for infringement of his rights under

equality legislation in relation to discrimination and does not include any element relating to remuneration, and is therefore not taxable.

Hugh Lonsdale
Equality Officer

18 February 2014