

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
Jennifer Beary, Glen, Kilsheelan,  
Co Tipperary - *claimant*

CASE NO.  
MN371/2011  
UD375/2011  
WT120/2011

against  
Brian Mordaunt & Sons Limited, Davis Road, Clonmel,  
Co Tipperary - *respondent*

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr N. Russell  
Members: Mr J. Hennessy  
Mr F. Dorgan

heard this claim at Clonmel on 17th October 2012

Representation:

Claimant(s) : Neil J Breheny & Co, Solicitors, 4 Canada Street, Waterford

Respondent(s) : No appearance by or on behalf of respondent

### Determination

On the uncontested evidence of the claimant the Tribunal determines that she was unfairly dismissed. It was reasonable for the claimant to leave her employment in light of the treatment received by her at the hands of her employer.

In arriving at this Determination the Tribunal has had due regard to the following:-

- The claimant was asked to compromise her professional ethics as regards the treatment of the Value Added Tax Liability in respect of repossessed vehicles.
- The claimant was treated in a wholly unacceptable manner in respect of her pregnancy and statutory maternity entitlements. The Tribunal is satisfied that the company was unhappy that the claimant's pregnancy and related difficulties would necessitate her

being out of work for a period and communicated this in a number of ways to the claimant.

- The claimant's workload was increased considerably during this period and no alternative and suitable arrangements appear to have been put in place for her period of absence. Indeed her employer advised her that it could not do without her services during her maternity absence and would need her to truncate her maternity entitlement or work from home during that period.

During a stay in hospital in May 2010, after a serious bleed the claimant was inundated with work-related texts and e-mails. Immediately upon her hospital discharge following the bleed incident she was collected on behalf of her employer at the hospital and ferried directly back to her workplace.

- On her return to work following the still birth of her child, the claimant was subjected to unacceptable comments and treatment that were indecent in nature and disregarded her grief and disrespected her.
- Notwithstanding the death of her baby on the 1<sup>st</sup> of July 2010 and the subsequent delivery on the 4<sup>th</sup> of July 2010, the claimant's employer insisted that she return to work on the 19<sup>th</sup> of July, initially on the understanding that it would be on a part time basis until she felt able to cope, an arrangement which the employer terminated unilaterally a week later insisting that she work full time. In these actions by the company there appears to have been a total disregard for the claimant's wellbeing.

In the event of a stillbirth after the 24<sup>th</sup> week of pregnancy, the mother is still entitled to 18 weeks maternity leave.

- On the 21<sup>st</sup> of July the claimant was privy to a speaker phone conversation which she was clearly not intended to hear and which was strongly suggestive of provision having been made by the company to replace her. The refusal and failure of (GM), company director to subsequently discuss matters or engage with her are strongly supportive of this proposition.

Detailed figures were introduced to the Tribunal in respect of the claimant's losses and her efforts to mitigate. Having considered the entirety of the claimant's case, the Tribunal awards her the sum of €72,000 in respect of her Unfair Dismissal. The claim under the Minimum Notice of Terms of Employment Acts 1973 to 2005 is dismissed and as no evidence was adduced under the Organisation of Working Time Act 1997 claim this claim is also dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

