

DETERMINATION SUMMARY

Members of the Tribunal:

Sheridan Brooks-Hurst -	Chairperson
Karie Bergstrom -	Member
Shaun Cockle -	Member
André Ebanks -	Member
Tammy Ebanks -	Member

INTRODUCTION

The Gender Equality Tribunal (“the Tribunal”) was convened on Thursday, 16th May 2013 at the Government Administration Building, George Town, Grand Cayman to conduct a hearing and make a determination in relation to discrimination complaint GET/1201, which was recorded on 13th December 2012 (“the complaint”).

Neither of the parties to the complaint was legally represented and both parties provided written evidence prior to the hearing. Oral evidence, on oath, was also provided on behalf of each of the parties at the hearing.

At the conclusion of the hearing, the Tribunal indicated its Determination and exercised the option to provide the reasons for that Determination, in writing, at a later date, but prior to the expiration of twenty-eight (28) days.

THE FACTS

The complainant had been employed by the respondent company since 16th July 2012. She informed her employers that she was pregnant on 25th October 2012 and was terminated from her employment on 9th November 2012. The complainant alleged that her termination was due to her pregnancy.

According to the evidence presented, the employers initially expressed satisfaction with the complainant’s performance via email in August 2012. However, the complainant did not realise that in or about the end of September 2012 they were having serious doubts about keeping her on and commenced communication on finding her replacement on 21st September 2012, i.e. over one month prior to their being notified of her pregnancy.

Although the respondent gave evidence to the effect that the complainant had been provided with certain verbal warnings, it was agreed that there had been no formal written warnings to the complainant and no independent evidence of any warnings was presented. There is no evidence that the employers knew that the complainant was pregnant prior to 25th October, 2012 when she informed them of this. There was also no evidence that the Complainant was aware of the content of the internal correspondence to find a replacement for her or of the intention to replace her.

On 9th November 2012, the complainant was terminated from her employment. She responded via email to her employers on 13th November 2012 outlining her position regarding her view of the amount of the final payment due to her. The Tribunal noted that she did not indicate, in this first written response to her termination, that she felt the decision to terminate her employment was due to her pregnancy. When questioned by the Tribunal about this she indicated that she did not want to “rock the boat”.

On 26th November 2012, after collecting her final cheque, the complainant sent an email to the employers alleging that her termination may have been due to her pregnancy and requesting the balance of the remuneration she believed was due. This was the first time that she alleged that her termination was due to her pregnancy and that she had been asked whether or not it was her intention to get pregnant at her initial interview with the employers.

That same day, the employers responded to the effect that the payment provided was fully in accordance with the provisions of the Labour Law.

THE LAW

Section 35 of the Gender Equality Law, 2011 (“the Law”) provides for findings of the Tribunal. It was the duty of the Tribunal to determine whether, on the evidence before it, viewed objectively and on the balance of probabilities, it was of the view that the complainant’s employment was terminated due to her pregnancy. If so, it would mean that she had been discriminated against because of her pregnancy under Part 2 of the Gender Equality Law.

THE DETERMINATION

Based on the evidence presented, the Tribunal determined that it could not, on the balance of probabilities, objectively conclude that the complainant’s employment was terminated due to her pregnancy and, as such, the requirements of section 3 of the Law were not made out by the complainant.

It was clear, however, that because the complainant had no knowledge of the email correspondence in September 2012 regarding her performance and the employers’ need to recruit a replacement, she concluded that her employment had been terminated due to the disclosure of her pregnancy to her employers.

In view of the above, the Tribunal found that the complainant’s allegation that she was terminated because of her pregnancy was unsubstantiated. The Tribunal also found that the complainant was neither frivolous nor vexatious in her complaint but that her complaint was founded on her genuine and reasonable, albeit unsubstantiated, belief that she had been terminated on the basis of her pregnancy.

There was no award of costs in this matter.

This document is a summarised version of the 30th May 2012 Determination of the Gender Equality Tribunal in the matter of discrimination complaint GET/1201 under the Gender Equality Law, 2011. This summary has been produced for information and does not identify any parties or person other than the members of the Tribunal.