

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD1287/2004

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B.L.

Members: Mr. J. Browne
Mr. D. Mahon

heard this claim at Wexford on 19th October 2005, 5th, 6th and 7th December 2006

Representation:

Claimant: Ms. Pauline Codd B.L. instructed by Rory Deane & Co., Solicitors,
Temple House, 8 Templeshannon, Enniscorthy, Co. Wexford

Respondent: Mr. Martin Lawlor of James P Coghlan & Co, Solicitors,
Charles Street, New Ross, Co Wexford

The determination of the Tribunal was as follows: -

This being a claim of constructive dismissal it fell to the claimant to make her case.

The respondent, an architectural practice, employed the claimant as "gofer" in September 1996 and by May 1998 she had progressed to the position of architectural assistant/ technician. The employment was uneventful until 2001 when a disagreement over sick pay led the claimant to tender her resignation, the claimant was given time to think it over by the managing director (MD) of the respondent and withdrew her resignation. There were no further incidents until a clash of personalities occurred between the claimant and a personal assistant/receptionist (PR). The claimant's position was that in various incidents PR had not processed documents for her, had not let her back into the office at lunchtimes, had shown bullying and aggressive behaviour towards her, this was characterized by PR screaming at the claimant. Whilst PR had no authority over the claimant she felt that MD always sided with PR. She had on several occasions been reduced to tears by the actions of PR. Incidents had occurred on a weekly basis from October 2003 onwards.

The claimant's position was that office procedures had been amended in such a way as to deny her the right to accept or to make telephone calls to clients other than responding at a particular time of day to a list of calls she was presented with by PR. She was not allowed to type letters and there was excessive monitoring of her work. Whilst no disciplinary measures were ever taken against the claimant she was on several occasions called into the conference room to talk about things. The respondent had no written discipline or grievance procedures. The respondent's position was that

there had been problems with the claimant's attitude to compliance with office procedures over a prolonged period and that PR, by virtue of her duties had come into conflict with the claimant on this account.

The claimant left the office of the respondent after an exchange of words on the 5 March 2004. She was invited to a meeting on the 11 March 2004 with MD and AC (the accounts' clerk). She had phoned MD on the Monday night and asked if she could return to work. MD had said no. A letter issued to invite her to the meeting on the 11 March 2004. The claimant assumed this was to sort everything out and overcome what had happened. She was not notified in advance that the meeting concerned timesheets. The claimant told MD that she had issues with PR in October 2003. She had not put these issues to MD in writing. MD mentioned the "personality clash" between the claimant and PR in a letter of 16 March 2004. This was not acknowledged at the meeting on the 11 March 2004.

A meeting to discuss office practices was held in the offices of the respondent on 8 April 2004. This resulted in the threat of deductions from the claimant's pay in relation to unfilled timesheets even though no such provision existed in her contract of employment. This meeting centred on the matter of time sheets and the claimant was precluded from bringing up her problems with PR. A further meeting was held on 16 April 2004 attended by MD, the claimant, a former employee who was a friend of the claimant (FE), PR and an independent facilitator (AF). After PR left this meeting it was agreed that the claimant could leave the employment as she indicated her wish to so do as she felt it would prove impossible to reach a satisfactory conclusion to allow her to remain in the employment. It was agreed that the claimant could leave on good terms subject to a satisfactory settlement. No such settlement was reached and this culminated in the claimant's formal resignation by way of letter from her solicitor to the respondent's solicitor on 23 April 2004. This letter foreshadowed the claim before the Tribunal; the claimant was paid until 28 May 2004.

Determination

The Tribunal, having considered the extensive evidence submitted by the parties and taking into account all the written documentation supplied in support of the evidence, has come to the conclusion that the failure of the respondent to take effective action to resolve the situation existing within the employment had rendered the position of the claimant to lack that dignity which every employee is entitled to and thus justified the claimant in treating herself as being constructively dismissed. The Tribunal also notes the absence of compliance by the respondent with the legislative requirements placed on an employer by the employment protection legislation. In particular it notes the absence of any proper disciplinary or grievance procedures within the respondent and the failure to comply with the Terms of Employment (Information) Acts, 1994 to 2001. The Tribunal determines that the most appropriate remedy in the circumstances is compensation and accordingly award the sum of €38,000.00 under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)