

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:  
Employee

CASE NO.  
MN85/2006  
UD151/2006

WT36/2006

against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001  
ORGANISATION OF WORKING TIME ACT, 1997  
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr W. Power  
Mr F. Barry

heard this claim at Dublin on 14th July 2006  
and 2nd October 2006  
and 29th January 2007

Representation:

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Claimant: Mr. Conor Bowman, BL instructed by Mr. Joseph Burke, McCartan & Burke,  
Solicitors, Iceland House, Arran Court, Smithfield, Dublin 7

Respondent: Mr. Marcus Dowling BL instructed by Arthur O'Hagan, Solicitors, Charlemont  
Exchange, Charlemont Street, Dublin 2

The determination of the Tribunal was as follows:-

**Claimant's Case**

The claimant told the Tribunal that she had eighteen years experience in care work and had a qualification in community work. In July 2001 she took up employment with the respondent company. She commenced as a team leader and in October 2001 she applied for a managerial position. She was employed in a remedial and assessment unit where the Courts referred young people. It was a full time residential unit and at the time the claimant was employed. Approximately thirteen young people were in the centre. In August 2004 she was assigned to the XXXX Unit. Mr. L.O'M was acting unit manager. She had difficulties with him and she made a

complaint in 2004. She expressed her concerns about working with Mr. L.O'M. She tried to resolve it with L.O'M. and she stated he undermined her, he asked her for reports that were already agreed. Staff felt that there was no point in reporting to her. The claimant spoke to the director, Ms. C.W. As a result of concerns expressed by staff the claimant and L.O'M. agreed the way forward was through mediation and this was signed off on 21 December. On the 21 December the claimant telephoned the centre and informed the respondent that she would not be attending the Christmas mass. She informed the respondent that she would be in after annual leave on 29 December. She was unable to return to work and she informed C.W. on 3 January 2005 that she would be absent for a long time. In February she telephoned C.W. to inform her that a medical certificate was on the way. She had a general chat with C.W. and the claimant asked her would she be moving to a unit on her own. The claimant informed C.W. that she had the mediation agreement to return to.

The claimant was happy for the opportunity to move forward. C.W. told the claimant that she had abandoned mediation. The claimant told C.W. that this was not helping her feelings that she had of being bullied. C.W. asked the claimant to reflect on what she had said. The claimant contacted Ms. B.B. in March to inform her that she was returning to work. Mr. E.B told the claimant that he could not cross over what was agreed with C.W. C.W. asked the claimant for clarification on the alleged bullying complaint. The claimant went to the occupational health department on 22<sup>nd</sup> March. She telephoned C.W. to inform her that she was fit to return to work. The claimant had a meeting on 29 March with C.W. and she was offered the right of representation. As the claimant was absent on sick leave she assumed it was the first opportunity to discuss the issues that she had. C.W. told the claimant that she could not allow her to return to work until the issue of bullying was clarified. C.W. told the claimant that mediation did not exist and the claimant thought that she was returning to work. She reported to C.W. in April to clarify the situation as requested. The claimant's trade union representative supported her at the meeting in April 2005. C.W. was seeking clarity on the issue. C.W. told the claimant that she had not signed mediation and the claimant did not deny what she had said to C.W. on the telephone. No resolution was open to the claimant and she was denied the opportunity to return to work. She was not allowed to return to work and C.W. again told her that she had abandoned the mediation and that she was present at the meeting on 21 December. She was still out of work and it was agreed that she would have a return to work interview in May, this was agreed with her union representative, C.W. and the claimant.

When she showed the mediation agreement to C.W, director in Finglas C.W. told her that she had abandoned it. In attendance at the meeting were Mr. R.R., the claimant's trade union representative, Ms. C.P. Secretary, C.W. Director, E.B. deputy director of operations. Everyone was in dispute about what the issues were. The claimant expected to return to Aspen Unit. It was a very stressful time for the claimant and she had every confidence that it would resolve the issues that she had. In a letter dated 13th April compiled by C.W. to the claimant's union representative the claimant was of the understanding that she still had the opportunity to engage in mediation.

The claimant felt that the meeting which took place on 4 May which was attended by the claimant's union representative, Mr. R.R. Ms. C.P, secretary, Mr. E.B., deputy director and C.W. director was a repeat of the previous meeting. The claimant asked why she could not return to work and she was informed that it would be insensitive to Mr. L.O'M. L.O'M did not want any scenes and the claimant never made scenes. She was informed that she had aspirations about wanting her own unit and all the claimant wanted was to return to work and to have the mediation agreement in place. She was informed if she did not move that her unit would be investigated and to think of L.O'M. The claimant felt that there was a bias against her and C.W. was not happy. The claimant was annoyed that L.O'M was still in work. The claimant felt that she was bullied into a corner if she

did not return. A recess took place and the claimant was asked if she wanted to go to the Grove, which was, she felt a step down. She had no direct responsibility for staff. She asked why L.O'M. was not given a unit and she was informed that she wanted her own unit. The claimant had no choice but to move. She tried to be reasonable, she agreed to the move and there was no issue in relation to her practice. She was never given an explanation regarding what the move was about.

In May 2004 L.O'M was employed in the capacity of acting up role when she was absent on sick leave. She never took time off while she was receiving fertility treatment. She had an ectopic pregnancy and had to undergo emergency surgery. She was never given an explanation as to why she could not use the mediation. She started on 5 May in the Grove and it was a step down unit, she was assigned to the office, she did not have a lock on the, a landline, staff or young people. The claimant felt discriminated against and she was not pleased. She was identified to undertake work on the library website. When the website was set up training continued and E.B. (deputy director) told her that he would like her to undertake training. The claimant was an on-call manager and she no longer supervised staff, her job was gone and she felt that she was sidelined. Her relationship with C.W. continued in a professional manner. She asked E.B. the deputy director for a work plan and he told her that she was going over old ground. The claimant attended for interview for another job. Staff were aware that the claimant was in mediation with L.O'M this was announced at a staff meeting.

The claimant was now in the Grove and it was not going to open. E.B. telephoned her and informed her that it was going to be taken over by the Department of Justice. The claimant asked if she could return to the operations unit and she was informed that she could not. Other managers were on annual leave. One evening C.W. congratulated the claimant on obtaining another job. C.W. offered the claimant a year's leave of absence. The claimant had not accepted another job at this time and a reference request was made on her behalf. She received a card wishing her a Happy Retirement. She felt undermined by this. She was only back at work and she had no choice but to move. When the claimant was absent on sick leave C.W. was very supportive.

At one stage the claimant was informed that there was unit cover for her. The claimant was quite taken aback by this. Her position was rapidly diminishing. The claimant always undertook the on call duty, her position became untenable and there was no way out of it. In July E.B. told her that all her work was taken over by the Department of Justice and he told her that she would be working in the staff-training unit. The claimant did not know what she wanted to do, she loved her job and she was never going to be given a chance to return to the operations job. A number of people went for interviews at this time. The claimant went to her doctor and he certified that she was suffering from stress.

On 10 August 2005 the claimant submitted a letter of resignation, as her position was untenable. An exit interview was standard practice and it afforded the opportunity to speak to someone other than management. She was initially offered an exit interview and was then informed that she could go to C.W. for the exit interview.

In cross-examination the claimant stated that she told C.W. that she felt bullied on occasion. The claimant admitted that the first time she used the term bullying to C.W. was when she refused the claimant mediation. The claimant stated that on occasion that she felt that she was bullied. C.W. told the claimant to think about it before she made a complaint. Mr. L.O'M. was asked to act as unit manager on 9 November. One of the unit manager's left. At the time about twelve staff looked after eight people. On October 31st C.W. instructed staff to meet with her and C.W. asked how matters were. The claimant gave her suggestions and she informed her of how difficult

working relations were with Mr. L.O'M. The claimant had no role in the bullying process in the company. In 2002 the claimant had difficulties when a staff member shouted at her. E.B. was aware of the difficulties and he told the claimant that it would all pass over. Two mediation meetings took place one on 9 December and the other on 17 December. She told E.B. that she felt that mediation was going to resolve issues and she felt supported for the general stress that she was under. She felt undermined and bullied by Mr. L.O'M. and she was afraid going to work. On 22 December she had to attend the doctor, on 23 December she was on annual leave and on 29 December she was threatened with a miscarriage.

Staff had no notice of any resolution to mediation. She accepted that if both parties did not agree to mediation that she could not have it. She telephoned C.W. in February 2005 and the respondent was preparing for the opening up of the Operational Care Unit, which the claimant had previously worked in. The claimant wanted to return to work. When asked that C.W. did not realise that things were as bad the claimant responded that either way she hoped that the agreement she signed would be studied. The claimant mentioned that she was stressed. When asked that on 11 March that she telephoned E.B. She stated that she told E.B that it was going to be difficult to return to work. The claimant's understanding was that E.B. had given up the mediation. She agreed it was a very serious matter to accuse someone of bullying. She was not the only person who made the complaint against Mr. L.O'M.

A meeting was arranged for 18<sup>th</sup> April 05 to discuss her return to work. Returning to work after 3 months is difficult. The Centre wanted to withdraw in writing her complaint about bullying. She would not withdraw in writing a complaint she had not made. She wanted to return to work under the terms of the mediation agreement. It was not an easy meeting. Another meeting was arranged for 3<sup>rd</sup> May. At that meeting she was told agree to move to the Grove or there would be an investigation of the Aspen unit. She had no choice about the move. There were no young people in the new unit, neither were there any staff. It had not opened. In the Aspen there were 10 night staff and 12 day-staff. After two and a half months in the new unit she resigned. She got a new job but is paid €20k less per annum. In the car park she was offered a year's leave of absence. She did not trust the offer and turned it down. She felt that her job at the Centre was untenable. She had hoped to return to work under the terms of the mediation agreement. The Centre said that the mediation agreement was defunct and did not explain why. The mediation agreement was signed on 21 Dec 04. The claimant felt that she was penalised for using mediation.

R.R. a full time union representative with IMPACT gave evidence. At the claimant's request he attended the meetings in April and May. The purpose of the first meeting was to address the claimant's return to work. The mediation agreement was null and void. The claimant was being forced to make a complaint. The Director C.W. was very aggressive. She talked over the claimant and ridiculed everything she said. C.W. wanted the claimant to put her complaint of bullying in writing. The claimant said she had not made a complaint. The witness indicated to C.W. that best practice would be to reassure the claimant and use the mediation agreement. No new issues had arisen since the mediation agreement was signed. The claimant felt that she was being kept from work while the other party was still working. C.W. said, according to the witness, that the other party L.O'M. refused to implement the mediation agreement. The witness felt it was a pity the other party was alienated by false information from management of the Centre. A review of staff relations was agreed.

The Donnellan Report recommended that a new Director be put in place and that there be a focus on restoring the trust and faith of the staff in management. The Report was never implemented. The witness said that the claimant was badly treated. She sat through two aggressive and confrontational meetings when she should have been supported. The promise to do a staff review

at Aspen came to nothing. L.O'M. who replaced her in an acting up capacity was held on to, but she was moved. Overall she was bullied out of a job.

### **Respondent's Case**

E.B. gave evidence. He was the Deputy Director of the Centre. He has worked there for twelve years. There were two units but four unit managers. Two unit managers worked in each unit. When the claimant's partner unit manager resigned L.O'M was appointed acting up unit manager. The claimant had concerns about L.O'M acting up. However he, the witness, asked them to work together. He had supervision every month with the unit managers. The claimant felt undermined by L.O'M. When the claimant told him she felt undermined and bullied, he sent a memo to the Director. He did not agree that the job in the Grove was a 'silly job'. The XXXX in 2004 proposed a step down unit to prepare boys to leave the Centre. It was to be based on the Servo philosophy, the boys would learn to cope with their lives by looking after themselves. There was no sanction for the step down unit from the Dept. of Education but he was confident that the Dept. of Justice would require the unit.

The card was one from a set of 6. He left a card and a candle for everyone at a coordination meeting attended by 16 or 18 people. He was back at work a year. He put the greeting cards on the table. People sat where they chose. No insult was intended.

He had not reviewed the files before appointing L.O'M as an acting up unit manager. When the decision to move the claimant was made he was not aware of the mediation agreement. He had been aware of the mediation process but he had assumed that it has petered out.

### **Determination**

The Tribunal having carefully considered all the evidence believes that the claimant was constructively dismissed from her employment. This arose as a result of a deterioration in the relationships she had with senior colleagues at XXXX. A mediation process was initiated but was not implemented at all. The Tribunal awards the claimant €15,000.

As this was a case of constructive dismissal the terms of the Minimum Notice and Terms of Employment Acts, 1973 to 2001 do not apply.

No evidence was adduced under the Organisation of Working Time Act, 1997, accordingly the claim under this Act fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

