

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM(S) OF:**

Employee

**CASE NO.**

UD1312/2005

against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms C. Egan BL

Members: Mr. D. Morrison  
Mr P. Clarke

heard this claim at Sligo on 5th September 2006  
and 18th December 2006  
and 19th December 2006

**Representation:**

Claimant(s) : Mr. Anthony McCormack, SIPTU, Sligo Branch, Hanson Retail Park,  
Cleveragh, Sligo

Respondent(s) : Ms. Anne Hickey, Solicitor, Wine Street, Sligo

The determination of the Tribunal was as follows:-

The Tribunal heard legal argument from the representative for the respondent. She indicated that the date of termination of employment was 19<sup>th</sup> January 2005. Form T1a was received in the Tribunal on 8<sup>th</sup> November 2005, and was amended on 17<sup>th</sup> November 2005. Based upon the information contained in Form T1a she argued that the claim was out of time.

The legal representative for the claimant indicated that the claimant was ill, that she had provided medical certificates to cover her absences, which she continued to forward the respondent during 2005. Based upon correspondence between the parties he argued that attempts had been made to resolve an issue over a work related injury. He argued that the dates on Form T1a were thus cited in error and that the claim was in time.

The claimant was also called to give sworn evidence.

She indicated that she had continued to provide medical certificates up to circa November 2005 as she had hoped that issues between the parties would have been resolved by that stage. They were not, and she felt that she had no option but to constructively dismiss herself.

The legal representative for the respondent argued that the claimant could have arbitrarily selected any date from January 2005 and dated correspondence now relied upon in order to bring the claim within the due timeframe for submission of her case.

Having considered the issues raised by both parties, the Tribunal allowed the case to proceed to a full hearing.

### **Claimant's Case**

The claimant said that she commenced employment initially on a Community Employment Scheme (CES) and was subsequently employed by the respondent in 2003. Her duties in the playgroup area involved acting as Assistant Leader and working with the children. She confirmed that she had undertaken training courses in childcare, was qualified at Level 2 under the VTEC (?) system, and had completed modules on child protection, safety, on parent to parent, occupational first aid as well as in adult and paediatric first aid. She said that she enjoyed her job and "loved" working with children. She reported to her immediate Supervisor.

The claimant said that problems first emerged while she was employed on the community employment scheme. As the spouse of the Chairman, other staff members felt that she (the claimant) was there to "spy" on them. She also felt that her grandchildren were not being treated properly by her direct Supervisor. She continued to perform her duties, but felt that she was denied opportunities to work with the children by her Supervisor, nor allowed to undertake constructive work with them. She said that she was concerned for the health and safety of the children but that she was afraid to say anything. She said that she was excluded from nursery work by the Supervisor. If she said anything, she felt the Supervisor would become "offish" with her and that this resulted in her feeling uncomfortable. She initially brought her concerns to the attention of the Board of Management, and was informed by them to confront the issue directly with her Supervisor, which she did, but to no avail. She said that the Supervisor would "become furious" if she, the claimant, became aware of issues affecting the playschool. She believed that the Supervisor's negative attitude stemmed from the claimant's express concerns over the Supervisor's treatment of her grandchildren and that she (the Supervisor) was "picking" on the claimant through her grandchildren. The claimant said she again brought her concerns to the attention of the Board at the time her contract was renewed, as she felt that the Supervisor became more spiteful. A sub-committee of the Board of Management was established to consider her complaint, which included the claimant's spouse. The Supervisor was unhappy when the claimant told her the composition of the committee, and she herself was later confronted by the senior Leader about revealing this information to the Supervisor. Despite correspondence on the matter, she understood that the Board had discussed the matters with the Supervisor, but she was not told the outcome of those discussions. She said she felt degraded, and was excluded from every aspect of the work of the playschool. She felt that the Board was not really interested in getting to the bottom of the matter and maintained that throughout the period she simply wanted to do her job. The only time she felt really happy in the job was when the Supervisor was absent on maternity leave.

She said that by this stage she was absent on sick leave, but her doctor was in contact with the Board. She confirmed that by letter dated 22<sup>nd</sup> March 2005 she was advised by the Board that an investigation would take place, but could not recall being interviewed during that process. She was not told the outcome of those investigations. Despite her appeals for a resolution of her complaint she said she merely received written apologies from the Board for the length of time taken to resolve the matter. She believed that the Board wanted to keep her from the workplace. A meeting

arranged for 16<sup>th</sup> September 2005 did not take place and the claimant said she felt that the Board had withdrawn from the process. She felt completely let down by the Board, that no action had been taken to resolve her grievances. In the circumstances she had no other option but to constructively dismiss herself.

In cross-examination, the claimant confirmed that her first complaint arose in 2001 when employed on the community employment scheme. She agreed that she was employed as an assistant in the playschool group and that her spouse was Chairman of the respondent. She denied any wrongdoing on her part when she told the Supervisor about the formation of a sub-committee of the Board to deal with her complaints. She denied that she had breached any rules of confidentiality in discussing issues with others that had come to her attention from Board Members. She denied any involvement in preventing another employee obtaining a position. She agreed that she had not raised her concerns over cleanliness and fire drills during staff meetings. She agreed that given her close relationship to a Member of the Board it was preferable to refer her complaint to an independent mediator. She agreed that she was absent from work from circa March – August 2004. She denied that she wanted some form of punishment or reprimand meted to the Supervisor and senior Leader, but said she merely wanted the Board to decide on the appropriate course of action to deal with her grievances. She agreed that she returned to work in September 2004 and remained there until January 2005. When put to her, the claimant agreed that in the absence of the Supervisor, and during her own absence on sick leave, the Board was placed in a difficult position in its attempts to resolve the issue through mediation. She accepted written evidence that the Supervisor had agreed to engage in the mediation process, and agreed that she had rejected the process. The claimant disagreed that the conflict arose from a clash of personalities between the Supervisor and herself.

When put to her that her position remained open to her, the claimant said that she felt she had been bullied, that the Board had done little to address her complaints and that the offer had come too late. She agreed that she was seeking the maximum compensation for the alleged bullying. She confirmed that she was in receipt of €121.00 in disability benefits, and had been told she could not return to work. When put to her that she had suffered no actual loss as the disability payment was higher than that paid to her by way of salary, the claimant said that the compensation sought related to the loss of her position.

In reply to questions posed by the Tribunal the claimant said that she was not aware of any report on the issue of her grievance, and agreed that she had representation at meeting. She confirmed she was not aware of any procedures to deal with complaints between staff when employed by the respondent.

On the **second** day of the hearing it was clarified that the claimant's gross wages were €101.71 per week. The claimant explained that she was still out of work, was receiving benefit and was not available for work due to a medical condition.

A member (known as Ms K) of the Board of Management gave evidence. She explained that most of those involved with the respondent, including the claimant, were neighbours. In 2003 she received a telephone call from the claimant requesting a meeting. The witness contacted a fellowboard member, (known as Ms M), explaining the claimant wanted a meeting as she had a grievance. The Board were also aware of the claimant's grievances. Two separate meetings were held but there was no real outcome. A sub-committee was set up to deal with staff issues, which met on three or four occasions, and their findings were issued to the Board. She stated that she had seen the report but do not think it was acted on. When asked, the witness

said that all avenues seemed to be exhausted but felt that if both sides were represented the issues could be reconciled.

On cross-examination the witness replied, when asked, that the claimant was not willing to cooperate with the process of mediation. After this was rejected the witness had no further involvement in the matter. When asked by the Tribunal she said that the claimant felt undermined by her Supervisor. She was not allowed to tell the children stories and seemed to be the only person cleaning the toilets. She explained that she, along with Ms M, also met the claimant's Supervisor on two occasions. The Supervisor also had grievances. There were notes taken at these meetings but were not available at the hearing.

Another member of the Board (known as Ms HML) gave evidence. She said that she was aware of the claimant's case; it had been brought up at a Board meeting. The witness was one of the people involved in the sub-committee set up to investigate the issues between the claimant and her Supervisor. Meetings were held separately with both parties. At the meeting with the Supervisor, her partner attended. The Supervisor's partner did not seem happy to have the witness attending. She did not attend any other meetings. Reports were issued to the Board. A number of members of the Board held a meeting with their solicitor. The witness said that she could not understand why the findings of the sub-committee were not carried out.

On cross-examination the witness explained that the claimant wrote to the Board on several occasions. She said that she could not understand why the issue could not be discussed at the meetings. She explained that if an issue arose that was personal to any member of the Board they were to absent themselves from the meeting. As the Chairman was the husband of the claimant it was clear that he should leave the discussion. He was reluctant to leave. The witness said that she could not understand why the matter could have been resolved even though both parties were absent from work in late 2004/ early 2005. She said that she felt the matter could still be resolved with both parties if they all sat down with the representatives and discussed the matter.

The husband of the claimant and Chairman of the Board gave evidence. He explained that he wife, the claimant, told him she was having problems at the playschool. He told her to go through the proper channels. She met with Ms K and Ms M and two lengthy statements were taken. The statements were sealed and Ms M held them. Arbitration was recommended but it did not work out. Statements were also taken from the Supervisor and the senior Leader. The witness said that he brought the issue up at Board meetings, as nothing seemed to be happening. The problem was going on five years. He was asked to leave the discussions. The witness told the Tribunal that he approached the senior Leader for the statements taken but some pages were missing. A meeting was held in the respondent's solicitor's office. The witness stated that an insulting comment was made at that meeting concerning the matter.

When asked, the witness explained that when he had arrived home from Board meetings, the claimant would have casually asked how it went but said that he would tell her not to ask. He felt that it was too boring to discuss. He said that good news always seemed to get out from these Board meetings. He said that he felt the Supervisor always wanted to know the "news" first. She seemed annoyed that he was the Chairman and that his wife, the claimant, would find out first. In his mind he felt that the Supervisor seemed to be "fed" information and seemed to be "tutored". He said that they all had got on in the past and could not understand why it had all gone downhill.

When put to him, he agreed that the Board was a split camp. He said that when he heard that the union would be involved, he thought it was a great idea but the Board vetoed it. It was said that if

went ahead the respondent would get in trouble with the Department.

On cross-examination the witness said that the claimant had been privy to some information from Board meetings if they were of any relevance. Confidential issues were never discussed. When asked, he said that it was mentioned at Board meetings that issues discussed should not leave the room. He said that he had told the claimant that he was joining a sub-committee. The following morning the claimant was told the same news by someone else. When asked, he said that it was not his decision to make when or if the Supervisor should have been informed first. He told the Tribunal that he had got annoyed at a Board meeting that the matter was not being dealt with. When put to him, the witness stated that it was the first time he had heard that his daughter had wanted to attend a Board meeting.

When asked by the Tribunal, the witness said that he had not seen any minutes of Board meetings where the claimant and the Supervisor issues were discussed.

A voluntary member of the Board (known Ms M) gave evidence. She met with Ms K and the claimant and the Supervisor separately. The claimant felt undermined by the Supervisor. The Supervisor was very hurt that she had not been contacted directly by the Board and informed of the setting up of the sub-committee. There were also other issues with the claimant including the fact that she was the Chairman's wife. The witness said she took a note of the meetings and said she would type it up and both parties could sign them respectively. She gave Ms K the claimant's copy to get it signed but never received it back. The witness and Ms K also met with the senior Leader and discussed the fact that she had confronted the claimant. The senior Leader said that she would apologise to the claimant. The witness said that she felt they were all too close and the introduction of an independent third party would help to resolve the matter. The witness contacted a mediator. Both parties involved agreed to take part.

The witness said that the Chairman had brought up the subject at a number of Board meetings and was very annoyed. He made it clear that the claimant was not happy with the mediation process. However she later changed her mind and took part. Due to a family illness, the Supervisor could not attend. The Supervisor then commenced maternity leave.

When asked, the witness said that on one occasion the claimant had had a problem with a proposed new member of staff. The matter was soon resolved to everyone's satisfaction. The witness said that she did not feel that there was any bullying or victimisation, just a clash of personalities between the claimant and her Supervisor.

On cross-examination she said that she had handed over the claimant's typed statement to be signed off. She said when asked that confidentially was an ongoing issue within the respondent's Board. She is no longer a member of the Board.

On the **third** day of the hearing another member of the Board (known as Ms ML) gave evidence. She explained that she was appointed the Supervisor's link person to the Board.

In 2004 the Supervisor approached the witness and told her that she had issues with the claimant. The claimant had told her, the Supervisor, of some issue to do with the playschool. The witness said that she found the matter quite unfair that the Supervisor should have been informed first. When the witness entered the kitchen area the senior Leader was present and she told her what had occurred. The witness explained that she had always approached this person if she had a problem. The senior Leader spoke to the claimant. The witness did not.

The witness explained one occasion in the past when she had brought her grandson to the playschool. The claimant made an issue of the fact that the child had been given food from home to eat which was not normally allowed. She could not understand why the claimant personalised the matter and she brought it to the attention of the Board. The witness spoke of the Chairman bringing the issue up at Board meetings and the introduction of a mediator. The witness said that she got “fed up” with all the bickering and the lack of confidentiality and she resigned from the Board.

On cross-examination the witness stated that it was understood between the Board members that Board issues were not to be discussed outside the Boardroom. She agreed that it was natural for partners to discuss things but that these Board issues should have been kept to themselves. She was not aware who was leaking information from the Boardroom and on several occasions news came back to the Board about issues discussed elsewhere.

Another Board member (known as Mr S) gave evidence. He explained that he had been appointed Chairman of the staffing sub-committee who investigated the allegations of bullying. Their finding was that the senior Leader was to apologise to the claimant. The Supervisor was also to apologise to the claimant for excluding her from activities. The senior Leader agreed to apologise but this fell through. The sub-committee’s findings were given to the Board but nothing came of it. The witness explained that during the process they sought and received union advice. Two union representatives from different offices were asked to represent each party separately to attend a meeting in September 2005. When this idea was put to a Board vote, it was decided not to go ahead with the meeting. The witness said he resigned from the sub-committee straight away. When asked, he said that he had not sought a copy of the claimant’s statement concerning the incident. When asked about confidentiality, he said that it was up to people if they wanted to gossip.

On cross-examination the witness stated that there were a lot of hurt feelings amongst all involved.

### **Respondent’s Case**

The Community Supervisor from FÁS gave evidence. He explained that if the claimant had any problems, he was the person to talk to but she never had.

The Community Development Coordinator (senior Leader) gave evidence. She explained that there were a number of projects run by the respondent, the playschool being one of them. It was funded by a government department. Her role was to make sure the projects ran smoothly. She explained that she attended Board meeting but was a non-voting director. She said that all involved in the projects were neighbours and friends.

She said that she felt the Supervisor had a difficulty giving instructions to the claimant for fear of the consequences. On March 1<sup>st</sup> 2004 the Chairman proposed at a Board meeting that he would chair a sub-committee concerning the playschool. The witness said at the meeting that she did not think it was a good idea. The following day the Supervisor came to the witness and told her the claimant had told her about the sub-committee. The witness said she would bring it up at the staff meeting. When she later saw the claimant and told her that it was not helpful for people to hear what had occurred at the Board meeting. The claimant replied, “She bloody well isn’t at that again”. The witness told her “not to go there”. It was not in a threatening manner, the witness told the Tribunal.

The witness met with Ms K and Ms M about the matter. She said that the idea of mediation was a

great idea, as closure was needed. The witness was informed that an apology to the claimant was required. She was later asked for a written apology. Six weeks after the incident a letter was sent to the funders of the witness' post. She was asked for an explanation. The witness said it was a very stressful time for everyone. She told the Tribunal that it was a great shame that the matter could not have been resolved.

On cross-examination the witness said that there was a confidentiality issue, it was generally understood that Board members discussed issues outside the Boardroom. When put to her, she said that she may have been given an envelope from Ms K or Ms M and could not recall if she had handed it to some one else.

The claimant's Supervisor gave evidence. She told the Tribunal of an incident concerning the claimant's grandchildren. One grandchild was hitting the other on occasion during breaktime. The witness sought advice from a friend with playgroup experience and she decided to separate them. The claimant was not happy and made a big issue of the matter and said she would take the matter to the links person. The witness explained the matter with the childrens respective parents. They had no issue with the separation. The claimant's attitude seemed to change towards the witness after this.

The playschool lost some staff and it was decided a new staff member was required. A person was nominated but the claimant had a problem working with her. Following calls with the Community Supervisor from FÁS the matter was resolved.

A meeting was held in 2003 to try to set up a Parents Association but no one turned up. Another meeting was set in 2004. The staff, including the claimant, were told they were welcome to attend. The claimant told the witness that she knew all about the idea of a Parents Association as her husband was setting up a sub-committee for it. The witness said she asked the claimant did she not think she should have been told in order for her to tell any parents that got involved. The witness said that she was not happy with the claimant's comment about it being "about time the parents got involved". The witness had tried previously to set it up. The witness walked away.

In the canteen the witness met Ms ML, her links person, and told her what had been said and that she was sick of the claimant coming to work with information from Board meetings. She was informed that the matter had been discussed the previous evening at the Board meeting but said it had not been finalised. She, Ms ML, had put her name forward for the sub-committee and that she would sort it out. The senior Leader was also present in the canteen. The witness went back to the playschool.

The witness explained that two months previously the claimant had informed her that she had been told that they would have to re-apply for the positions. Her husband, the Chairman, had verified to the claimant what she had been told. She had felt very insecure at the time. She told the senior Leader and was told that she should not hear information like that and that it would not happen.

When put to her the witness said that she had not bullied the claimant. The claimant was a well-respected member of the staff and very good at working with special needs children and had cared for a special needs child one day a week in the playschool. The witness explained that the claimant was very good at reading stories to the children. The cleaning of the playschool was done on a rota basis but the claimant volunteered to clean the toilets on a regular basis. The claimant had commented previously that a former member of staff did not know how to clean properly. The matter was resolved.

The witness said that she never had a problem with the claimant being the Chairman's wife but did have with the idea of him chairing the staff sub-committee. She said that he was anxious to commence mediation to sort out the issues between the claimant and herself. She wrote to the Board on several occasions but received no response.

On cross-examination the witness stated that she had trusted the claimant. She said she had no problem giving the keys of the locked cabinet to the claimant. When put to her she said that she did not have a problem with the claimant knowing information from Board meetings, it was just how she used it. The claimant never raised any grievances with her.

When asked, the witness said that she did not feel she had anything to apologise to the claimant about. She asked would the claimant apologise to her but there was no answer. The witness said that she felt mediation would have been very helpful to resolve the matter and would have no problem working with the claimant in the future.

### **Determination**

Having heard all the evidence adduced over three days, the Tribunal finds that the claimant was constructively dismissed. However the Tribunal are constrained in the amount of the award by virtue of the fact the claimant has been unavailable for work since her dismissal and is still unavailable for work and no evidence was presented of a possible date the claimant would be able to return to work again.

The Tribunal awards the amount of €406.84, this being four weeks wages, under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

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(CHAIRMAN) Kate T.O'Mahony

(MEMBER) Desmond Morrison