

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

UD993/2006

against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr W. Power  
Mr. N. Broughall

heard this claim at Dublin on 22nd March 2007

Representation:

\_\_\_\_\_

Claimant(s): The claimant in person

Respondent(s): Mr Tom O'Grady, IBEC, IR/HR Executive, Confederation House,  
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

#### **Claimant's Case**

The claimant told the Tribunal that she was employed as an assistant planner and reported to the planner in her area. The planner undertook maintenance and repairs on behalf of Wyeth to enable the plant to operate. She received a contract of employment and an employee handbook. When she commenced employment she was located on a different floor than the other assistant planners and she felt isolated. After a year she was moved into the office with the planner and initially there was no space. She was not directly involved with the planner and she was told she could telephone him. Some tasks that she undertook could not be explained over the telephone and necessitated personal interaction. The majority of the work that she undertook was data entry. An assistant planner was employed in each department. It was quite apparent that three assistant planners had better interaction with the planners they reported to than she had and they also attended meetings. It was pointed out to the claimant on a few occasions that certain people were better at their jobs than she was because the planners that they reported to trained them better. The planner interviewed the

claimant for the position and he told her that she would work as support to him. She was not trained to the required level and he did not want to relinquish his duties. The work entailed personal knowledge being imparted in the running of the department. Maintenance technicians worked downstairs with the planners.

The claimant raised her concerns with the manager on site at the time and she stated that this manager was aware of the planner's behaviour and he did not say anything to the claimant as he was moving on. Mr. MD replaced the manager and the claimant spoke to Mr. MD in November 2005. Mr. MD told her that he had seen how the planner behaved and she felt that Mr. MD would help her. It was suggested to the claimant that she move job within the organisation but it was not feasible. Mr. MD told her that he would arrange training but the situation did not improve at all. She was aware that the planner received a verbal warning but she did not know the reason for this. The claimant's performance was never questioned.

When the claimant telephoned the planner with work related queries he said to her "how many times a day are you going to telephone me". She relayed an occasion in the calibration laboratory when another person was present, the planner continued to speak on his mobile phone while giving the claimant instruction and the person in the laboratory told the claimant that she should not allow the planner to speak to her in that manner. In November 2005 she went to HR. There was no improvement in the situation. She met DC the HR manager in the canteen and she had met him a few times prior to this. She sought advice from Mr. McD who was in office to liaise with contractors and clients. Mr. McD was very sympathetic to her and she assumed that Mr. McD and Mr. DC had a conversation. She could have made a formal complaint. The claimant knew the next course was a formal complaint and she did not want to go down that route. She did not feel it would help her situation and she sought advice. Another job was available in the company, which did not pay the same rate. She was still in contact with MD the contract manager and she spoke to Mr. McD. She sent e-mail to the HR manager on 13 February. She was employed as an assistant planner and she had not advanced to that level due to lack of assistance.

She felt that the company was closing ranks. She felt it was one against two and she was not going to be believed. She never told the planner that she could not stand him. She was not aware that the planner had made complaints about her. She did not think that the meeting helped her to articulate her concerns and she had no idea if they spoke to the planner and they waited for her to make a formal complaint. She sent e-mail to Alex who was the manager on site but he had not read it. After seventeen months with the respondent she offered her resignation and she told the planner that he was not very approachable.

In cross-examination when asked that she had made serious allegations against the planner she responded that as certain issues arose with him she documented them in her diary. An employee training history was put in place by Wyeth and training was "hands on". She had completed all basic requirements that Wyeth had put in place. She did not think that lodging a formal complaint was the way to deal with her complaint. She would have expected someone to shadow her but it did not happen. She stated that an assistant planner that she knew shadowed the planner in her department. A weekly meeting was due to take place and the planner told her that she did not need to go. She decided to take the informal route and she sought advice from a friend at the time.

In answer to questions from the Tribunal she stated that she did not take the formal route as she was afraid, it was a very small office and she could not imagine going the formal route as it was not going to make for a good working future. Eighteen months was a long time and she could not

continue in employment with the respondent. She was aware that the two routes available to her were the informal and formal routes. When she received the induction she was aware that a certain amount of technical knowledge was necessary.

### **Respondent's Case.**

Mr. D C on behalf of the respondent told the Tribunal that he joined the company in July 2005 as an employee relation's manager and he was promoted to HR manager. The claimant first came to his attention in January 2006. He received an e-mail from the claimant on 13 February 2006 and he felt it was time to take some action. He requested a meeting with Mr. M D (the claimant's contract manager) and the claimant. There was no record that a verbal warning issued to the planner and he was not reported by anyone. Mr. DC took notes at the meeting and the claimant was furnished with a summary of the meeting the next day. The key issues that the claimant-raised concerns about were training and allegations about the planner's behaviour. The claimant made it clear that she did not want him to approach the planner. He felt the only way to resolve the matter was to talk to both parties and he would take the matter further depending on what came forth. Mr. D C did not believe that management was closing ranks. He felt that the claimant would trust him to see the matter through to a fair conclusion. The claimant made serious allegations about the planner and he needed the opportunity to defend himself. All new employees were given an induction course.

In cross-examination Mr. DC stated that 140 employees were employed on site and he would be concerned if a Wyeth employee made a complaint about the respondent. He last spoke to the claimant in February or March of 2006. He spoke to the planner about specific incidents that the claimant had complained about and he was given quite a different version from him. He was in contact with the claimant and she was keen that justice be done. The witness had two versions of the same event. He needed witnesses before he could make a decision and they did not want to get involved. An employee spoke to him after the event. When asked that Alex who was a manager did not open an e-mail, which the claimant sent him after she left, he responded that he could not comment on it. He had no recollection of Alex saying to him that he did not want to dwell on the past. The respondent offered the claimant a position in the company after she met with the MD.

Mr. MD the second witness on behalf of the respondent told the Tribunal that he was contract manager and he moved to Wyeth on 30 September 2005. He did not tell the claimant that a verbal warning issued to the planner and he did not discuss disciplinary procedures with any other employee. The role of an assistant planner was to assist the planner in maintenance and on the calibration system. It also involved the production of a schedule with the co-ordinator. When the claimant moved downstairs she worked in the same office as the planner and worked near Mr. MD. Until the claimant came to him he was not aware of an issue. He relayed a situation where a co-ordinator told him that if the laughing and joking between the claimant and the planner continued that he could not continue to work there. The contract manager could not understand how a problem existed between the claimant and the planner. Everyone on site was responsible for their own training and all employees received job specifications. All employees had their own ID and there was a large level of self-training.

When the contract manager became aware that there was a problem he called a meeting first with the claimant and then the planner. Both the claimant and the planner gave their version and three meetings in total took place. The issues that the claimant raised were lack of training and the planner's rude behaviour. She had an issue about calibration. The planner told him that the

claimant was there to undertake a role, she had been trained and he felt that the claimant did not comprehend the work and she did not have an interest in it. The planner told him that he was not getting the assistance from the claimant that he should be getting. After that he called the claimant and the planner together for a meeting. He told them that he could not understand the rude behaviour as every time he passed the office he heard them laughing and joking. He again asked the planner to show the claimant the matrix line by line and he asked the planner to show the claimant the SAP system and this was done on 3 February. The claimant then said that she did not want to work with the planner anymore.

He then had a meeting with the HR manager and the claimant, which centred on the issues that the claimant had raised. At the meeting he felt that they were making progress. The claimant went to his office and presented him with a letter of resignation. He told the claimant that a position would arise in the next few months in the respondent. The claimant had a job offer, the meeting lasted ten to fifteen minutes, and he was surprised that the claimant resigned as he felt they were making progress. The claimant was the only person that made a complaint about the planner.

In cross-examination the contract manager stated that when the claimant submitted her resignation she told him that she had a job offer. He was not aware of any conversation he had with the claimant prior to 30 September. He reiterated that as he passed by the claimant and the planner in their office he was under the impression that they were good friends. This was continuous and he could not understand it. During a discussion he had with the claimant she told him that she did not want to work with the planner.

The third witness for the respondent, Mr. IW, planner told the Tribunal that he commenced employment in February 2003 and it was his first job after he had finished college. He was very happy in his job. The first assistant planner that reported to him was promoted to a planner in another location on the same site. He first met the claimant when he interviewed her for the job. Two candidates applied for the position of assistant planner and he along with FF (a former manager) discussed the best candidate for the role and they chose the claimant. He was not sure whether the claimant would work out. He gave the claimant instruction on how to undertake her work and the claimant attended an induction course. His line manager Mr. MD told him in late 2005 that the claimant had complained that he was rude and disrespectful. He was very disappointed, as no one had ever made a complaint about him prior to this and he had never received a verbal warning. He trained the claimant as much as he could. He was summoned to a meeting and he answered the questions that he was asked.

The claimant had a difficulty in understanding spare parts and this was outlined in a training manual, which MD asked him to complete, but an employee of Wyeth completed the manual. He was asked to write a list of requirements for SAP. A training co-ordinator conducted training on SAP in February. FF a former manager wanted a specific task completed on a daily basis and he asked the claimant to do this task. He wanted to discuss with FF why it was necessary on a daily basis. He believed that he explained that to the claimant. The planner stated that he was not rude by nature. He now had a black mark against his character and he did not talk to the claimant about anything outside of work. He wanted to clear his name and he felt if he applied for a position in the company he would not have been successful. The claimant has been replaced.

In cross examination when asked if he was not sure that the claimant was a suitable candidate for the job why was the decision made to employ her he responded that there were only two applicants for the job and the respondent needed to hire someone right away. He stated that the claimant was

more familiar with calibration than he was.

### **Determination**

This was a constructive dismissal situation, which means the onus rested with the claimant to make out how the situation was so intolerable such that she had no option other than to resign.

No complaint had ever been made about the claimant's work. However, she was dissatisfied with the job description and seemed to have some sort of personality clash with the planner to whom she had been appointed to act as assistant.

She had made a complaint on a number of occasions to several supervisors concerning this relationship with the planner. However, she fell short of making any formal complaint, which meant the company could not investigate beyond an informal chat with both parties separately and together.

Clearly there were tensions at the meeting held with both parties but in the period thereafter it seems that there was no detectable ongoing difficulty and the Tribunal accepts the evidence of MD in this regard.

There was a clash of personalities. The claimant did not care for her immediate supervisor and no doubt his manner was brusque and off-hand. However, the Tribunal can find no evidence to suggest that the behaviour fell outside the normal remit of the workplace and in consequence finds that the claimant has not discharged her onus regarding constructive dismissal.

The Tribunal accepts that the company would have taken any application to initiate the grievance procedure very seriously had the claimant chosen to go down that route. She did not, and it seems likely that the claimant was leaving this job because she had better opportunities elsewhere and not because her situation in the workplace had become intolerable.

Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

