

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD106/2006

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. O'Neill
Mr. J. Moore

heard this claim at Cavan on 28 March and 21 June 2007

Representation:

Claimant:

Ms. Rachel Maher B L instructed by Ms. Bríd Miller, Solicitor,
8 Castle View, Castle Street, Roscommon, Co. Roscommon

Respondent:

Mr Niall Beirne B L instructed by Ms. Sorcha Finnegan,
O'Donnell Sweeney Eversheds, Solicitors,
One Earlsfort Centre, Earlsfort Terrace, Dublin 2

The determination of the Tribunal was as follows:

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

The claimant was employed as a laboratory technician from February 2000. The claimant later became a control room operator in the central control room (CCR), which is located close to the laboratory where the claimant worked initially. From the end of March 2005 the claimant reverted to a position in the laboratory, having assisted in the training of a new control room operator (CRO). There had been some taunting of the claimant but this had died down by the time problems arose in the working relationship between the claimant and his supervisor (CS). Around this time CS went on sick leave with stress. The claimant and CS travelled to work together.

On Friday 13 May 2005 the claimant received a letter from his shift manager (SM) inviting him to an investigative meeting on Monday 16 May 2005 to discuss allegations of bullying that had been made against him by CS. At the conclusion of this meeting, attended by the claimant, his shop steward, SM and the general manager (GM), where the claimant was asked about the allegations against him, the claimant was put on paid suspension. The claimant asked that the allegations against him be put in writing. On 19 May 2005 the human resource officer (HRO) wrote to the claimant inviting him to a disciplinary meeting on Monday 23 May 2005. This meeting did not take place as planned but on 24 May 2005 HRO wrote to the claimant setting out the allegations of bullying and harassment of CS against him. These were: -

- Comments made to CS to include “you’ll have to go boy, I’m taking your job, your time is up, they are going to get rid of you”.
- Refusing to carry out work instructions from CS in particular, on 24 April 2005 you were asked to start the mill at 12.45pm but on CS return to CCR at 2-00pm you still had not attempted to start the cement mill.
- Unauthorised deviation from work during night shift
- Persistent attempts to contact CS via telephone and text messages while absent from work
- Unexpected arrival of two people to CS home making inquiries about CS and yourself

It was now proposed to hold the disciplinary meeting on Friday 27 May 2005; the claimant was warned in this letter that dismissal could be a possibility if the allegations were proven. In the event the disciplinary meeting was held on Monday 30 May 2005, it was attended by the claimant, his union representative, the divisional manager (DM) and HRO. The claimant was told that the respondent wanted to discuss two areas, firstly the allegation of harassment and secondly the refusal to carry out a reasonable work instruction. The claimant denied the allegations of harassment. No witnesses were interviewed in connection with the comments that the claimant was alleged to have made to CS. The claimant accepted he had contacted CS by telephone and text but claimed that this had been in relation to a motor vehicle licensing matter in which CS’s wife who has expertise in this area had been assisting him. The telephone calls made by the claimant were identified by the number displayed and were not answered, and so the purpose of the calls was not established.

Only one text message was sent to CS and the company did not know its content. The

last time he had contacted CS in this way was on 8 May 2005, this was before it was confirmed to the claimant that CS was suffering from stress. The claimant denied any knowledge, before the event, of the visit of two people to CS's home. One of these visitors had called to collect payment for electrical work he had carried out in the house and was paid during the visit. The respondent did not interview this person.

The claimant was accused of failing to start the cement mill when instructed to do so by CS at 12-45pm on 24 April 2005. CS had to start the mill himself at 2-00pm. CS was unsure that the claimant was present in the control room when he issued the instruction to start the mill. The claimant's position was that from 31 March 2005 he had been working in the laboratory. The claimant did not understand the allegation that he was involved in "unauthorised deviation from work" and the respondent produced no evidence on this matter. The claimant denied deviating from his scheduled work and denied taking extended or unauthorised breaks during night shifts. The outcome of the disciplinary hearing was that the claimant was given a written warning of twelve months duration and was to transfer to another shift. This written warning was dated 1 June 2005. The claimant was given five days to appeal the decision.

On 14 May 2005 the claimant found a "hate" letter in his locker at work, this was a rekindling of the taunting which the claimant had previously suffered. He gave this letter to SM. As a result of this letter the claimant went to his GP on 20 May 2005 because he "couldn't handle it any more". His suspension notwithstanding the claimant presented medical certificates to the respondent to cover his absence from work until 3 July 2005. SM conducted an investigation into the letter but despite inviting the claimant to three meetings to discuss the findings of his investigation did not meet the claimant as he was on sick leave at the time.

The claimant's representative submitted a notice of appeal against the written warning on 3 June 2005. This notice was clarified in a letter from the claimant on 8 June 2005 in which he set out the five grounds for his appeal. In particular the claimant was seeking the opportunity to put the matters complained of by CS to him directly. The matter was then in abeyance due to the claimant's general debility until 22 July 2005 when the human resources manager (HRM) wrote to the claimant to request him to attend the company doctor in order to determine a return to work date. The claimant did not contact the respondent and on 8 September 2005 HRM wrote to the claimant to advise that, in view of his being absent from work without medical certification, he was in breach of disciplinary procedures.

The claimant attended an appointment with the company doctor on 16 September 2005. The resultant report suggested that the claimant had been advised by his GP and a psychiatrist to not return to his job with the respondent but to seek alternative employment. The claimant had not sought alternative employment at this stage. The report stated that the claimant was capable of work and this was now a management issue. A copy of this report was sent to the claimant on 23 September 2005, the claimant was asked to advise the respondent of his intentions immediately. Having received no reply HRM wrote to the claimant again on 9 November 2005 requesting him to return to work on Monday 14 November 2005 to resume his normal duties. This correspondence crossed with a letter from the claimant's solicitor to the effect that the claimant was now in a position to proceed with the appeal against the written

warning. The appeal was heard on Monday 21 November 2005 and was attended by the claimant, his solicitor, HRM and the group development director (GD). The claimant set out his five grounds of appeal and GD reserved his decision pending his own investigation of the matters at hand. The result of the appeal was issued to the claimant on 15 December 2005 and this upheld the issuing of the written warning. The claimant resigned from his employment on 22 December 2005.

Determination

Having carefully considered the evidence in this case the Tribunal is satisfied that it was reasonable for the claimant to conclude that there was an incomplete investigation into the allegations made against him by CS. It is further satisfied that at a time the respondent was taking the claimant through the disciplinary process arising from those allegations, the claimant made the respondent aware of difficulties he was facing in the workplace. On all three occasions when the respondent called the claimant in to discuss his complaints he was on certified sick leave. No further attempts were made by the respondent to deal with this issue. Based on the company's flawed procedures and incomplete investigation the claimant was entitled to conclude that he could not get natural justice from the respondent. Accordingly the claimant was entitled to consider himself to be constructively dismissed. The Tribunal awards the claimant €10,000-00 under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)