

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**

Employee

**Against**

Employer

**under**

CASE NO.

UD145/07

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

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

Members: Ms. J. Winters  
Mr. P. Trehy

heard this claim at Dublin on 24th July 2007.

**Representation:**

Claimant : Ms Nuala O'Donohoe B.L., instructed by Patrick Branigan & Company,  
Solicitors, Teach An Chuinne, Dyer Street, Drogheda, Co. Louth

Respondent: Mr. Gary McCarthy B.L., instructed by WhitneyMoore, Solicitors, Wilton  
Park House, Wilton Place, Dublin 2

The determination of the Tribunal was as follows:-

Dismissal as a fact was in dispute.

**Claimant's case**

The claimant commenced work with the respondent as a receptionist on 17 October 2005. Her initial probationary period was for three months. On expiry of the three months she was employed in a full time capacity. She reported directly to the Manager but also had dealings with the Managing Director. In February 2006 she informed the Manager that she was pregnant and he made the Managing Director aware of this. Prior to the notification of her pregnancy she had a good working relationship with both the Manager and the Managing Director.

The Managing Director's attitude towards her changed significantly. He did not congratulate her on her pregnancy, which she thought unusual. He became very irrational in his attitude towards her. On one occasion he told her to remove two heavy bags from the hallway which was not her job. On another occasion she felt intimidated by his attitude towards her when, with four or five other employees, she was on a break outside the front door of the building. He also criticised her handling of telephone calls. On another occasion he asked her to ascend the large flight of stairs just to bring a piece of paper back down again.

A month before she was due back from maternity leave she telephoned the Manager saying she wished to extend her maternity leave to 20 February 2007 and followed up that with a letter of confirmation.

An employee in the company invited the claimant, together with her partner, to the company's Christmas Party. This took place on 13 January 2007. In the early hours of that morning the claimant was subjected to a tirade of abuse by the Manager who told her "to get out of here now, you screwed us over, you knew you were pregnant when you started, you knew your dates to a t". Subsequently, she was subjected to another tirade of abuse by the Manager saying she was nothing but "a floozy and stay-at-home mother". The claimant became very upset and felt put down by him. She reported the incident to the night porter in the hotel and left with her partner.

The following week she sought legal advice on the matter and engaged a solicitor to handle the matter for her. The Managing Director left a message on her home telephone and corresponded with her on several occasions but she was far too upset to reply to these. She felt she could not go through the grievance procedure available in the company because she was so upset.

Since 13 January 2007, the claimant has not received an apology for the abuse she was subjected to. She has registered with FAS and applied for several jobs but has not secured employment. She is in receipt of a Job Seekers Benefit of €196.00 per week.

In cross examination, the claimant said she had a good working relationship with both the Manager and the Managing Director prior to the incident. She could not say if the Manager was intoxicated at the time of the incident which occurred at approximately 3 a.m. on 13 January 2007.

The claimant's partner gave evidence and stated that he accompanied the claimant to the Christmas Party. After the tirade of abuse the claimant was subjected to, he asked the Manager what he had said to his partner and his response was "only the f..... truth". The claimant's partner told the Tribunal that the claimant was very upset after this verbal abuse and that she found it very hard to talk to anyone.

### **Respondent's Case**

The Managing Director interviewed the claimant for the job. He found the claimant to be well presented and had a good manner. He asked another employee in the company to invite the claimant and her partner to the Christmas Party. The evidence given by the claimant at the hearing was totally alien to him. His understanding was always that the claimant was returning to work. He didn't think it unusual that he did not congratulate the claimant on her pregnancy. He didn't get involved in events organised by the employees outside of office hours. Regarding the heavy bags left in the hallway, he only mentioned this to the claimant saying that they should be removed.

Warehouse staff were responsible for removing such items at all times. In fact, he did not have a clear recollection of this.

On the weekend of the Christmas Party the Managing Director arrived in the hotel on the Saturday evening. At that stage he did not know there had been a problem. He was shocked when he heard of the incident between the claimant and the Manager. He believed he had a telephone conversation with the Manager on the Sunday afternoon. The Manager's behaviour was totally out of character and he never had a problem with him in the past. On the following Monday he met with the Manager and another senior Manager and the Manager told him he had no recollection of the incident. The Managing Director said that the Manager was very embarrassed about the incident. That afternoon the Managing Director left a message on the claimant's home telephone asking that she contact him. On 19 January 2007 he wrote to the claimant asking her to either contact him in the office or at his home and gave her his home number. He wrote to the claimant on three separate occasions after that. It was indeed his intention to resolve this serious matter. He wanted to open the lines of communication. He wanted the claimant to return to work.

Under cross examination, the Managing Director said he could not recall if he congratulated the claimant on her pregnancy. He said he never reprimanded the claimant in front of staff while she was outside the door with four or five others having a break. He asked the Manager to apologise to the claimant but the Manager was never disciplined by the company. The Managing Director believed that the Manager's outburst was a once off situation. The Managing Director was always hopeful that he could discuss the issue with the claimant and resolve the matter. Since the incident between the claimant and the Manager, the company employed a H.R. company to update the company's handbook and arrange a training programme for managers as he believed the company's grievance/disciplinary policies needed to be updated.

**Determination:**

The incident, which took place on the night of 12-13 January 2007, was extremely serious and despite the fact that alcohol had been consumed by the guilty party, it is the view of the Tribunal that this amounted to gross misconduct. This incident was not the only matter which concerned the claimant. It was part of a pattern of behaviour by the respondent which the Tribunal accepts equated to an attempt to undermine her position in the company.

The decision of the claimant not to engage in the grievance procedure, or indeed to co-operate with the investigation of the incident by the company, was entirely understandable given the monstrous nature of the abuse she suffered. In those circumstances, she was under no legal or other obligation to co-operate with the company. The Tribunal believes, notwithstanding the non-co-operation of the claimant, that the manner in which the company dealt with the incident was unsatisfactory. In particular, the Tribunal regrets the decision by the company not to invoke its own disciplinary procedure against the senior employee who was responsible for the incident on the night of 12-13 January 2007.

Accordingly, the Tribunal believes the claimant was constructively dismissed from her employment and is entitled to compensation in the sum of €25,000.00 under the Unfair Dismissals Acts, 1977-2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

