

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

RP621/2006
UD1225/2006

MN811/2006
WT386/2006

Against

2 Employers

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
UNFAIR DISMISSALS ACTS, 1977 TO 2001
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997**

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 1st May, 24th July 2007 and 2nd October 2007.

Representation:

Claimant: The claimant in person:

Respondent: Mr. Wesley Farrell BL instructed by Mr. Tim O'Hanrahan, O'Hanrahan & Co, Solicitors, Lexington House, 71 Ballybough Road, Fairview, Dublin 3

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant told the Tribunal that she underwent a two-stage interview and forwarded her CV to the respondent. When she commenced employment with the respondent there was a three-year backlog of accounts, which had to be sorted. She was part of the office administration staff and she helped with the accounts. The respondent did not employ an accountant and she had to learn on her own without instruction. She requested training, as she did not know how to do the accounts.

She trained herself in order to resolve the situation and she did her best. She had a good relationship with PC but during the summer a number of changes took place when PC purchased property. PC purchased a house for the claimant in the summer of 2005. At this time the claimant was undertaking bookkeeping duties. She undertook computerised accounts and she asked the financial accountant for an excel spreadsheet which was not efficient and did not cross reference items. In summer 2005 she set up an accounting system, which the company was happy with. When PC bought new property it meant her workload increased. In September 2004 she asked PC to put her on a salary. She was on an hourly wage when she started. She asked for €300 a week and PC looked at the hours she worked. She recorded the hours that she worked and in summer she undertook more work and earned more money. She was put on a salary in January/February 2005. She was not supported and received no assistance with her work. She received compliments on how competent she was and her employment ceased on 7 November due to PC's behaviour.

She went to PC on 6 November, she called a meeting and PC did not attend. She telephoned PC on the 7 November and he attended at the office at 2.30p.m. She approached PC and she told him he should start looking for someone flexible, PC continuously asked her when she was leaving. She asked PC why he was asking her this and he asked her about her plans for the future. She told him that she was studying for a Masters in Philosophy for the future. She had a contact with a voluntary group in Argentina. She told him her job was no reflection on what she would do in the future and she had no immediate intention of leaving her employment. PC asked her if she was leaving. She said to him "why do you ask this" and she told him that he could hire someone else. She told PC if he was uncertain about her plans that he could hire someone else. She made various plans but she was happy to remain with the respondent. There were many issues that made her feel unhappy and her feelings about working in the company changed over time. On 7 November 2006 PC asked the claimant if she was leaving. PC asked her why she wanted to leave and she told him there were many reasons. She told him that he did not respond well to her suggestions. When she raised a query in relation to time sheets he did not react well to the suggestions that she made and he told her to continue without them. When she told him that the computer was broken he would not get a new one. She told him that they could finish the conversation later.

PC's last words to the claimant were that she did a great job. The claimant wrote down everything that she said. She felt that she did not get any support. She had been flexible in her job despite the increase in the workload. PC told her when she left that he would look after her. She had a strong impression that PC was pressing her to resign and she did not know why he was doing it. The accountant DF telephoned her on 8 November. DF asked the claimant if she wanted to know her entitlements and the next day she received a text message from PC. PC told her that she had quit. She was not happy with PC for asking her when she was going to Argentina. PC had fired her and she was confused. She did not receive a redundancy cheque. She did not work from November until January. She made enquires about volunteer work in January and February. In January 2007 she started looking for jobs in Dublin and she is still looking. PC referred to her as crazy and paranoid. The office was in a mess and she was expected to fight fires all the time. PC told her that she was not useless but he told her that she was paranoid. It was a small plastering firm and when she commenced employment she did not agree with PC the number of hours that she would work. She was the only person in the office and she never received anything that she asked for.

Discussions took place regarding redundancy in July 2005. The meeting on 7 November lasted a half hour. She did not receive any Terms and Conditions of employment. She was always flexible and PC telephoned her at short notice to undertake tasks. She told PC that she needed time

off and that she could continue working for him. PC did not know that she was sitting her first examination on 25 April. PC telephoned her and asked her to report to the office on 26 April. She told him that she had to do an examination and that she could not attend work on the day of her exam.

The claimant stated that she was not given annual leave in 2005 and she did not receive two weeks notice. A verbal agreement was in place between the claimant and PC. PC told her that she was not entitled to sick pay. It was stated verbally that she had four weeks holidays and sick pay. There was no discussion in relation to the transfer of undertaking and this occurred while she worked for both companies. The claimant was paid by cheque every two weeks.

In cross-examination the claimant stated that she undertook bookkeeping duties and that accounts were non-existent. She did not receive a statement of employment. She wrote some cheques but not all of the cheques. She agreed that her average earnings per annum were €13,000 to €15,000. She had very flexible hours and one or two days a week she could report for work when it suited her. She considered the role that she undertook important. When asked if she had sole responsibility for wages she responded that employees recorded their own hours of work.

She established a database to record information in relation to hours and locations of work. The purpose of the database was to establish time sheets for invoices. When asked if the respondent helped her friends from Slovakia she responded that that was irrelevant. When asked if PC assisted some of her friends she responded that PC told her that he had lots of work and could use two to three people. She told PC that two were interested in work and he was delighted. She moved house twice and the people in the company helped her. PC offered her a loan, he was interested in property and he asked her if she was interested in buying a place. Two months after it happened PC broke their arrangement and she ceased payment. She owed a lot of money, she did not have a job and €2,900 of the loan remained unpaid. It was untrue that she told PC in 2006 that she was leaving the company. PC asked her what she intended to do in the future and she disagreed that she intended to leave the company in early 2006. She stated that she would give PC two weeks notice and she would help someone else to learn the job. It was not her intention to leave. She was waiting for contact from the Argentinean missions and she initiated contact with them. She stated that employees make all kinds of arrangements in their private life. She might be going to Argentina and it was possible that she was going in January. In January 2006 PC asked her about her plans and what she wanted to do. She told him she would have to go overseas and she did not know if she mentioned January. The respondent asked her to undertake two weeks training. She was denied the right to two weekly meetings and she did not know why. When asked if she expected a contract earlier or not she responded that the respondent told her it could be January and she did not receive a contract.

PC told her that he needed to hire a quantity surveyor and the claimant told him that he could hire whomever he wanted. PC told her that a quantity surveyor's job was to shout at people and she could not work in a noisy environment. When asked if she was told on 3 November that a quantity surveyor was being hired to bring in jobs she responded that it was to curtail costs. PC had acquired six properties and the claimant was expected to make all the arrangements. She worked most days and PC would know if she was on holidays. When asked if an employer was entitled to know her working hours she responded that she was there to earn money. When asked if PC was aware that she was coming to work she responded that PC manipulated her. She telephoned PC on at least three occasions to organise a meeting. When asked if PC telephoned her on 6 November she responded that he did not telephone her and she phoned him to enquire if she was coming to work the next day.

She agreed that she told PC on 7 November 2006 to look for a replacement. PC asked her when she wanted to leave and he did not consent to training and he screamed at her and told her it was all in her head. She told PC how dare he make reference to what was in her head and he made similar comments to her on many occasions. PC called her darling and angel and she told him she was not his angel. At the commencement of her job she thought that PC would give her lot of tasks and proper direction regarding what he wanted her to do with time sheets.

When asked if on 7 November it was her intention to resign she responded that she did not resign. When asked if she intended to resign before going to the meeting she responded that she did not resign. The resignation commenced the day she received the text message. She had a conversation with DF the accountant in relation to it and PC messed her about. When asked if she made no direct complaint she responded that in July she approached PC regarding property and she told him that he was not paying her to stress her out. PC pressurised her and she told him if he gave her a list that she would deal with it. In January 2006 the same issues arose regarding a list of jobs and PC agreed with it. PC spoke to his sister who offered the claimant a free day of training. She did not accept that PC promoted education and he never paid for training. When PC made a reference to having things in her head he meant that she was imagining it. She did not scream at PC and she told him that she would complain to the Labour Court. She stated that PC signed every cheque except hers and PC dismissed her. When asked if she could have contacted PC she responded that she contacted DF in relation to the dismissal and on the date she was dismissed DF telephoned her. PC denied her notice and training. She told DF that she did not quit and she was willing to work out her notice. She stated that it was incorrect that she was asked to come to the office to finish her work.

Respondent's Case

PC gave evidence. The claimant was employed by the respondent as a Secretary. She worked flexible hours for the respondent as she was attending college. She was responsible for wages, taxation and invoicing. PC had a good working relationship with the claimant. The claimant was pro-active. PC gave her a loan of €10,000 towards a house and helped her move house. The claimant repaid him €3,000. PC said that in early 2006 the claimant indicated that she was looking for work in Argentina. PC asked her when she was leaving, as the company needed a replacement. The claimant said that she would give him two weeks notice and help train a new person on the job in that period. PC asked her again in May/June 2006 and he believed the claimant said she was leaving in Summer 2006. PC felt the company would be in a difficult position without the claimant and he did not want her to leave. In July 2006 the respondent sold assets to another company Q Ltd. The arrangement was that the claimant would work for Q Ltd. and Q Ltd. would pay her wages. Q Ltd. intended employing a Quantity Surveyor and as the claimant liked to work on her own PC asked her if she would have a problem with this arrangement. The claimant said "you can employ anybody you want" and then she laughed.

The meeting called by the claimant on 5th November 2006 took place on 7th November 2006. At that meeting PC said the claimant became quite angry and told him that he should find a new staff member and that she was leaving. PC said the claimant said that he didn't take suggestions very well and didn't pay for training. He had told the claimant initially when she commenced employment that training would be made available for her. He denied that he wouldn't allow her attend training. PC said, "that's in your head".

PC said the claimant then became infuriated and said she would have him in the Labour Court. She produced four cheques, prepared in advance detailing moneys owed to her. The claimant then

became very angry and fired the keys on the desk and said that PC could find someone else to do the job and left. PC was taken aback by the outburst, he was shaking and shell-shocked. He had not received any complaint from the claimant regarding training and within 10 to 15 mins later texted the claimant. PC thanked the claimant for everything and said L would drop the cheques to the claimant the following day. Subsequently PC tried to contact the claimant by telephone. PC needed to access documents, which appeared to be locked on the computer. PC had to engage a computer expert to unlock documents on the computer.

He told the Tribunal that the claimant walked out in a fit of rage on 7th November 2006. He agreed that he asked the claimant once about every four weeks at what point in time she thought she might be leaving the company and how the overseas contract was progressing. PC said that the claimant might have been overworked and she decided the hours she worked. PC had huge regrets about the incident. He had no indication from the claimant prior to 7th November 2006 that the claimant may have been unhappy in the company. PC denied that he withdrew from the employment relationship with the claimant once he was told she was leaving.

DF tried to mediate with the claimant. The claimant believed that she might be entitled to a redundancy payment and also wanted to improve the situation. The claimant indicated to DF that she would work out her notice but would not come into the office while PC was there. One week later PC became aware that the claimant had initiated proceedings with the Employment Appeals Tribunal.

Under cross-examination, PC agreed that the company had no policy on holidays and public holidays. PC did not believe the stub for the cheque for €30.66 had relevant details on it. PC accepted that every time he asked the claimant when she was leaving, the claimant said she would give PC the relevant notice period. PC signed all the cheques, which the claimant prepared except those that related to the claimant.

The claimant successfully cashed three of the cheques but PC cancelled the third one for €30.66 as there was no detail on the stub and he was unsure as to what it related. Of the remaining three cheques, one was for salary and one for holiday pay for Q Ltd. and the third related to holiday pay for the respondent company. PC was unsure as to what periods of time these covered, they may have related to back pay of the previous week or maybe an earlier week. He said the claimant told him to sign the cheques now and said she was leaving. The first indication PC had of the claimant's resignation was in communication from the Employment Appeals Tribunal.

Determination:

The Tribunal believes that the relationship between the claimant and the respondents was highly unusual. In particular, the decision by the respondents to lend the claimant a large sum of money to purchase property was not normal.

Once the claimant informed the respondents of her plans to leave the employment and travel to Argentina at some unspecified point in the future, the relationship between the parties came under strain.

This pressure came to a head on 7th November 2006 when the claimant felt forced to adopt a position which was not consistent with her own wishes at that point in time.

The Tribunal was not convinced that the respondents were disappointed and shocked by

the claimant's actions on 7th November 2006. Specifically, the text message sent immediately after her departure from the respondent's offices suggests that the respondents were relieved at what had transpired.

In these circumstances, the Tribunal believes the claimant was unfairly dismissed. The claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and the Redundancy Payments Acts, 1967 to 2003 fail. The claim under the Organisation of Working Time Act, 1977 fails. The Tribunal awards the claimant €1,000.00 under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

