

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

Employee

CASE NO.

UD1129/2006

against the recommendation of the Rights Commissioner in the case of:

Employee and

Employer

under **UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K.T O'Mahony B.L.

Members: Mr J. Hennessy

Ms. E. Brezina

heard this appeal at Kilkenny on 3rd September 2007

Representation:

Appellant(s): Mr. Ed Kenny, SIPTU, Security Services Branch, Liberty  
Hall, Dublin 1

Respondent(s): Mr. John Barry, Management Support Services (Ireland)  
Limited, The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:-

This appeal came before the Employment Appeals Tribunal by way of an appeal from the recommendation of the Rights Commissioner reference r-042039-ud-06/JT

### **Appellant's/Employee's Case**

The appellant worked for the respondent from June 1997 until January 2006. He was employed as a security officer and was based in a brewery in Kilkenny. In June 2006 GF took over the position of duty supervisor, having been transferred from Dublin. Eight employees including the appellant worked under GF. Initially the appellant had no problem with GF. The respondent took over another company in 2003/2004. From the time of the take over the appellant noticed deterioration in the way the respondent behaved towards its employees: wages were wrong, some expenses were never paid and travelling expenses were not paid on time. His relationship with GF changed around this time and by 2005 it was not good.

The appellant was a member of a trade union and of the labour party. GF was constantly passing

disparaging remarks about his involvement with the trade union, his age and hedge schools. The appellant felt very demeaned by these remarks. GF had been making the remarks about his age from the time he came to the brewery. During his last year at work GF singled him out and constantly harangued him and made him feel generally incompetent. GF was brash and abrasive in discussions. The appellant felt there was no point in raising these problems with the respondent because it was well known that if you complained you would be transferred. GF was aware of how he (the appellant) felt. GF asked him to do things, which were outside the range of his normal duties: to change the towels in the dispensers, to help in the canteen if there was a function in the cellar bar and each time he came on duty there was a list of other places to check. The appellant never objected to doing the extra duties. He stuck it out for a year.

The appellant became depressed and was absent on sick leave on two occasions in 2005. His first illness was in early 2005. On his return to work after his illness GF mostly ignored him and when he did speak to him it was in a loud and sharp tone. When he returned to work in mid December 2005, after his second period of illness, he discovered that he was not rostered for December 2005. When a roster was put up on 16 December he saw that he was rostered to work at the TSB premises in Carlow after Christmas. He had not been asked about it, he was just sent there. He was the one sent to Carlow even though GF knew he was the only one in the group without a car and that he would have to use public transport. This was the last straw for him. Another employee lived in Carlow and he could have been rostered for that job. Every four or five weeks an officer is entitled to a week on days and this was changed when he was sent to Carlow.

Over Christmas he decided to resign and he tried several times, over at least two days, to contact GF to inform him of his decision. When GF returned his phone call on 2 January 2006 the claimant gave him a week's notice of his resignation. When he reported for duty in Carlow on 2 January 2006 another officer was on duty there and AH, the Accounts Manager in Dublin, told him to return to Kilkenny and he would be paid for the day. He did not report for duty at the TSB in Carlow after that because he believed that the other officer would be there.

It took him six months to recover his self-esteem and self-respect after leaving the respondent and he is still suffering from his experience there. GF spoke to him in a loud and sharp voice. The roster was altered when he was assigned to Carlow. At the time he was not proficient in computers. GF was aware of this and all employees had to undertake a certain amount of computer work

In cross-examination the appellant agreed that when an officer was absent from the Penneys contract he would cover for him. Under his contract of employment he could be assigned to other contracts but said that he would be consulted about it first. He had a feeling that GF did not want him in the company. He further agreed that the respondent recruited a security officer who was older than him but while GF also passed remarks to him about age the appellant felt they were directed at him personally. He did not object to the extra supervision duties; he was asked to supervise another premises, which was within walking distance of the brewery. He agreed that all the respondent's employees, including GF, were members of the trade union. He did not bring the issues to the notice of his trade union as there was no representative locally and he felt that if he did so the respondent would take action against him. However, he did complain to the trade union when the roster was changed. He thought they would get in touch with the respondent but he never followed up on it; GF never made any reference to his having lodged a complaint with the trade union. He agreed that he made some mistakes in the weighbridge documentation.

He agreed that he had problems using the computer and that GF spent a lot of time showing him

how to use the computer. He made some mistakes in the weighbridge documentation that he had to fill in and he received a written warning about this in June 2005. He was upset that he was given a written warning rather than a verbal warning. He asked to meet with AH, the accounts manager in Dublin who had signed the written warning, to discuss it with her. It was nothing formal, he just wanted to chat to her about it. She offered to come to Kilkenny but he went to Dublin to meet her. At the meeting they also discussed his performance and he promised that he would try to improve. He informed her about the problems he was having about his house and that he was going through a bad time. He did not mention his difficulties with GF as he felt that there was no point.

He was trying to sell his house at this time and was having difficulties with the sale. While both work and the sale of his house were stressful for him, his treatment at work was the main cause of his illness. His former supervisor used to attend to his expense receipts but GF told him they were not his responsibility. He was on holidays on 24 and 25 December and it was during this time that he made up his mind to leave. He felt unable to return to work because of the way he had been treated. He tried to contact GF on 2 January and GF returned his call on 2 January. He endeavoured to contact GF over at least two days and when GF returned his call on 2 January 2006 he informed GF that he was giving him a week's notice. He did not use the grievance procedure because he believed that no action would be taken. He had left school when he was fourteen years old and was sensitive to the remarks about hedge schools. He got the 8.30a.m. bus from Kilkenny to Carlow and an employee gave him a lift back to Kilkenny in the evening. There had been no discussion with GF when he gave him his notice.

### **Respondent's /Employer's Case**

The duty supervisor, GF, told the Tribunal that he supervised eight people. At the commencement of his employment he had a very good working relationship with the appellant and the whole team; they were co-operative and helped him to settle in. He was unaware of the change in the relationship and of any reason for a change. The extra duties were being performed for at least five years. Those on night patrol changed the towels and the officers themselves listed the towel changes. No grievance was ever raised about it. The only new duty was helping with the trolley of sandwiches. There were five steps leading to the canteen and the officers helped move the trolley. Because some of the staff in the brewery were so old that he passed the remark that they must have gone to a hedge school but he did not say this regularly. He did not harangue any employee. The appellant had more of a problem than the others logging on to the computer. He trained the appellant in the use of the computer. The appellant also made errors in the handwritten records: there were errors in the weighbridge documents and on occasion the wrong documents were used. GF went through this with the appellant. The appellant never complained to him or said that he was being singled out. At no time did the appellant indicate to the duty supervisor that he was treated any differently than other employees. The appellant did not give him any indication of how he felt. He did not make disparaging comments to the appellant in regard to his membership of a trade union. GF was also a member of the trade union. The respondent had a grievance procedure and a bullying and harassment policy. He communicated with staff daily. If a member of staff had a grievance they reported to him and the appellant did not bring a grievance to him. It is possible that the appellant had a problem about the rostering, he had to provide for cover when any of the eight men were on holidays or sick or wanted a specific weekend off. He could not make a roster work perfectly for fifty-two weeks a year. If a member of staff requested a specific weekend off that was the main issue that staff reported to him about. He never spoke to the union about a roster.

The appellant did not tell GF not to talk to him in a certain way; he (GF) has been told by others

that he is loud on the telephone. He had no reason to single out the appellant. He became a little frustrated with him over his failure to log on to the computer but he was not overly annoyed. Cover was needed for the TSB in Carlow for six days between 29 December and 6 January. Carlow was very accessible from Kilkenny. The appellant was sent there because of the way the roster fell. Both GF and the roster supervisor in Dublin provided someone to cover the TSB. The appellant normally worked Christmas and St. Stephen's day but he was not rostered to work these dates in 2005. The appellant reported for work to the TSB in Carlow on 2 January 2006 and discovered that another security officer had been assigned to that job. He had never complained that he had been singled out.

In cross-examination GF denied saying to the appellant that there would be a clean sweep or that there was no room for a man of his age. Men of the appellant's age are better for night work. It was a condition of employment with the respondent that employees are members of a trade union. Prior to taking up the job with the respondent he had also been a member of a trade union. When asked in relation to the appellant's proficiency on the computer he responded that the appellant had used a computer before GF started and the system had not changed. He was never asked to do spread sheets. There had been no disciplinary hearing before the written warning of 3 June 2005 was issued. He had told the appellant that if he continued making mistakes that he would get a written warning.

When asked if he arranged the roster he responded that the appellant worked in the brewery in December. The manager of the TSB in Carlow wanted the same security person on duty for the week and that was the request that went to Dublin. There was a mistake made in the roster in that two people were rostered. When asked if the appellant did not report for work on 3 January he responded that it had nothing to do with him and he last spoke to the appellant on 2 January. GF was responsible for the rostering assignment and he was not aware that another employee was there on the 3 January. He was aware of the disciplinary procedures in the company. When asked if the appellant was advised that he could bring a representative to the meeting he responded that he expected the appellant to contact the trade union. He was aware of the bullying and harassment procedures.

Under the grievance procedure and bullying and harassment policy an employee who had a grievance could contact his/her direct manager. When asked if employees received training on bullying and harassment he responded that the respondent did not do special courses. He (GF) sent complaints to the accounts manager AH to issue a written warning. He explained the situation to the appellant in a friendly manner. He was shocked when the appellant resigned. He did not encourage the appellant to remain with the respondent because he was angry on the telephone and he thought that he would contact AH. The appellant knew that the assignment in Carlow was for six days and he that he would then return to the brewery.

The accounts manager (AH) for the respondent told the Tribunal that she received a request from the TSB in Carlow for cover for six days. The appellant reported for work in Carlow on 3 January and discovered that another employee was rostered for work. She spoke to the appellant and told him to go home that she would pay him for the day. She was not aware that there were differences between GF and the appellant, the appellant did not mention it at the meeting in June 2005. She asked him if he wanted a shop steward present. The appellant accepted that he had made mistakes and she told him if he did not improve that he would be further disciplined. The appellant told her that he was under stress due to the sale of his house and he did not mention the problems with the computer. The respondent had a bullying and harassment policy, which was attached to the conditions of employment. The policy was completed some time ago and she thought it was prior to

her commencing employment with the respondent.

**Determination**

The appellant had problems, real or perceived, about the manner in which he was treated by the duty supervisor (GF). He agreed that the duty supervisor gave him considerable assistance with logging on to the computer. The appellant made no complaint to the duty supervisor about his alleged treatment of him, nor did he invoke the grievance procedure, nor did he raise the matter with the Accounts Manager (AH) in June 2005 when he travelled to Dublin to discuss the written warning that he had received. The respondent was wholly unaware that the appellant had any problems with the duty supervisor and cannot be at fault for not investigating it. In the circumstances the Tribunal finds that the appellant has failed to discharge the onus placed on him under the Unfair Dismissals Acts, 1977 to 2001 to show that due to the conduct of the employer he was entitled to, or it was reasonable for him to terminate his contract of employment. Accordingly the appeal for constructive dismissal under the Unfair Dismissals Acts, 1977 to 2001 fails. The Tribunal upholds the recommendation of the Rights Commissioner.

Sealed with the Seal of the

Employment Appeals Tribunal

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

