

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee
MN447/2008

UD944/2007

against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 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
Mr. D. Mcevoy

heard this claim at Cork on 14th May 2008

Representation:

Claimant: Mr. Owen Clifford B.L. Instructed by: Mr. Patrick Mullins, Dillon Mullins, Solicitors,
6 Rossdale House, Bishopstown, Cork

Respondent: Mr Conor Whelan, C/O Fit Distribution Group Ltd., Unit 7,
Northwest Business Park, Ballycoolin, Dublin 15

The determination of the Tribunal was as follows:

Dismissal was not in dispute in this case.

Respondent's Case

The respondent is a distributor of sanitary ware and installs displays in retail outlets. A technician was booked to install a display for a company in Newbridge on Monday and Tuesday (3rd and 4th September 2007) but as the area for the installation was not set up by the retailer the technician returned to Dublin on the Monday and a half-day was lost. On the same day GR, who assigns the work, received an e-mail from the National Sales Manager (NSM) that a display had to be done in Bangor for a major customer. GR assigned the same technician to set up the display in Bangor. When the claimant telephoned later on Monday to inform GR that the company in Newbridge was ready for the installation to begin on Tuesday GR explained about the e-mail and that the customer in Bangor, being a bigger customer, took precedence. The claimant was not happy with this and passed derogatory comments about NSM including calling him a snake and she said she would hand in her notice. GR had a good relationship with her and told her to

calm down. The claimant then said she that she “knew people” and could have NSM’s legs broken. GR reported the conversation to his Manager but initially only told her about the derogatory comments. He later became concerned about the threat and informed the manager but asked her not to tell NSM about it.

GR agreed that the claimant had problems with the service department and that she had made a complaint about him in particular. She said that he was not getting parts out in time and that she was losing customers. He accepted he had failed in this area and was given a verbal warning. He felt he deserved this and had no animosity towards the claimant because of it. He disagreed that aggression was a constant feature of interactions in the company. He denied he made up the whole story, and said that he would not have come down to Cork voluntarily, sworn on the bible and invented something like that. The HR section asked him to make a statement, which he did. He reported the incident to the gardai, but has heard nothing from them since. He was made redundant by the company in January 2008 because of a downturn.

The Manager relayed the derogatory comments the claimant had passed about him to the NSM. He telephoned the claimant but the telephone went dead. The claimant called him back a few minutes later and they had a heated conversation. He told her that he does not go behind her back or prioritise the work and that it was GR who had made the decision to go to Bangor on Tuesday. He ended the call. Later that evening, at around 7.30pm, the Managing Director (MD) told him about threats the claimant had made. He was distressed and disturbed by the threat and did not know why she had made them. He telephoned the gardai and he was advised to make a complaint. He and GR went to the garda station on 6 September 2007 and he made a statement. The garda told him that lots of such threats are just “hot air” but he did not know much about the claimant or her associates and he wanted the threat put on the record. He travels to Cork regularly and was concerned about these visits after the threats had been made. NSM agreed that he was very angry and upset with the claimant when he heard about the threats. He admitted to using some expletives or abusive language in his telephone conversation with the claimant. He was not involved in the decision to dismiss the claimant. He denied that there was a conspiracy to get rid of the claimant. There had been no communication from the gardai since he made the statement. The claimant had not made any direct threats to him. He relied on what GR had relayed to them.

The Manager told MD about the threats on the Monday. In the course of his investigation into the matter he (MD) spoke to GR, the Manager and NSM. He also discussed the matter with his fellow directors over the following two days and they also spoke to GR. He did not ask the claimant whether she had made such statements because he totally believed GR’s account of the conversation; GR was a nice guy who had not a bad word for anyone; he would never fabricate such a story. The seriousness of the threat constituted gross misconduct. MD decided to dismiss the claimant. He tried to fax the letter of dismissal to the claimant, but he was not successful, so he sent it to her by registered post. The respondent had not wanted to get rid of the claimant but threats like that could not be tolerated. Suspension would not be an adequate sanction because of the nature of the threat. There had been no problem with the claimant prior to this. In cross-examination MD agreed that such threats might be made in the heat of the moment. The claimant could be quite fiery but what she said was outrageous and the respondent could not take any chances. The claimant signed a contract of employment and it contains several references to the handbook. All employees’ entitlements and rights are discussed with them at their induction. MD was convinced that the claimant received a copy of the handbook. If she had read the handbook she would have seen that she could appeal her dismissal.

Claimant’s Case:

The claimant worked as Area Sales Manager for the company covering all counties south of Dublin. Initially the job went well and the pay was good, but she admitted that she was looking for another job. There was lots of tension in the respondent company and it was a very aggressive company to work for. The staff were a clique, and she was not part of it. She had lots of problems with the service department, which was run by GR. As a result of the poor service from it she was losing customers. GR was failing to send parts and telling lies. She made a complaint to NSM and GR was issued with a warning.

She had booked a technician to do installation displays in Newbridge on Monday and Tuesday, and in Tralee on Wednesday. The customer in Newbridge had sold a lot of the stock for the display but there was sufficient stock that the technician could have been getting on with. She had been on the telephone to GR a number of times during the day. She telephoned him again at 4.40pm to ask what was happening and she found out that NSM had pulled the jobs and that the fitters were going to Bangor. She was disgusted and that was not the first time NSM had pulled rank, so she let rip. She said that NSM was “a sneaky b-----” that she was sick of him and his bullyboy tactics and that she intended handing in her notice on Thursday. When NSM telephoned her later that day he was screaming at her on the phone and repeatedly saying, “How f----- dare you insult my character and integrity” so she hung up on him. When she rang him back a few minutes later he was calmer and she explained that she had called him “a sneaky b-----“ because he had pulled the technician from her job. He told her that it was GR who made the decision to switch the installations. He hung up on her. She repeatedly tried to contact GR but failed. On Wednesday she went to the doctor and she was certified unfit for work. While she was at home sick on the Thursday someone tried several times to send her a fax but failed. She received the letter of dismissal in the post on Friday. No one in the company contacted her after this, except someone from the HR section about her sick certificate. She was out of work until 14 November 2007 because her confidence was gone. She got another job and worked there until 5 March 2008, and then got her present job. She denied saying to GR that she would have NSM’s legs broken. She had heard about this allegation for the first time on the day of the hearing before the Tribunal. She would not have come to the Tribunal if she had made threats. Everything she had heard by the respondent’s witnesses at the Tribunal hearing was rubbish. She does not know any hit men and would not be capable of hiring one. The gardai had never contacted her. She admitted that she can be hot-headed. She had asked for a (written) contract of employment, but never got one. The first time she saw a handbook was at the Tribunal hearing.

Determination:

The Tribunal finds, on the balance of probability, that the threat attributed to the claimant was uttered by her. Whilst such a threat may well have been made in an angry moment and be void of any intention to carry it through, the Tribunal accepts the respondent’s position that, given the nature of the threat, he could not take any chances. Accordingly, the Tribunal unanimously finds that the respondent had substantial grounds for dismissing the claimant. However, in failing to put the allegation to the claimant, and so afford her an opportunity to respond to it, the respondent failed to comply with one of the basic principles of natural justice. Therefore, the dismissal is procedurally unfair and the claim under the Unfair Dismissals Acts, 1977 to 2001, succeeds. However, the Tribunal finds that the claimant made a substantial contribution to her dismissal. Having taken that contribution into account, the Tribunal awards the claimant €6,500.00 under the Unfair Dismissals Acts, 1977 to 2001.

The uncontroverted evidence before the Tribunal was that claimant was paid her entitlement in regard to Minimum Notice. Accordingly, the claim under the Minimum Notice and Terms of

Employment Acts, 1973 to 2001, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)