

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

2 Employees

UD1060/2006
UD1061/2006

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Mr J. Hennessy
Mr D. McEvoy

heard this claim at Cork on 16th October and 5th December 2007

Representation:

Claimant : Mr Declan Fitzpatrick, Eugene Carey & Co., Solicitors,
Courthouse Chambers, Mallow, Co. Cork

Respondent : Mr Eoin Clifford B L instructed by
David J. O'Meara & Sons, Solicitors, Mallow, Co Cork

The determination of the Tribunal was as follows:

The fact of dismissal was in dispute in both cases

Claimants' case:

The first named claimant gave evidence of having worked for the respondent initially for a few weeks in early 2002 and then got an offer of part-time work mainly in the evenings and Saturday mornings. The hours varied after that and she did Saturdays and Public Holidays. She told L, the co-proprietor these hours suited as it tied in with her child minding arrangements. She did not have a contract of employment and did not receive payslips for the first few years with the respondent. Her duties consisted of doing up orders for plants and pricing them and then she worked in the glasshouse and was planting containers. She loved working there. Over the two years before she and the other claimant left new workers were taken on and she had a problem with two or three of them. There was tension in the workplace and she found that some of the Polish workers were

intimidating and difficult to work with. One of them shouted at the claimant and they would hide pieces of equipment on her. They would then stand and stare and ask L to watch while the claimant and her colleague worked on their containers. At one point one of the Polish workers pushed a trolley on top of her fingers. The Polish worked long hours and were often cranky. There was one system of planting up containers for one group of workers where they had individual benches to work from whereas the Polish worked and talked together in groups and the claimant wondered why there was different set up for the latter. L would never tell them to stop talking.

At one point the supervisor had a problem with one of the Polish staff and L did nothing about it and her response was that they worked long hours and the business could not survive without them. In the Summer there were problems when certain staff would open the doors to leave in some air and the doors would be slammed shut thus forcing other staff to work outside. Another problem arose when the radio was blaring and the claimant told L she had a headache. When she asked if the volume could be lowered another group of workers kept turning up the volume and the problem was never resolved. Neither L or the supervisor sat down to talk to the staff and try to resolve these problems. There was no grievance procedure and no training regarding health and safety matters. When work was slack during certain periods, such as August to November and January Irish workers were laid off whereas the non-Irish worked a forty hour week during these periods. When the claimant mentioned this to L she would call the claimant "racist", this the claimant felt was her way to shout her down. The claimant felt she personally was a very good worker and was honest and straight. At times of special orders the claimant and her colleague were usually asked to do the work as they were fast workers and they were never spoken to about their work

On 26th June 2006 the claimant and her colleague were working close together and there was a lot to laughing and joking going on. When they were talking with the supervisor there was no mention of going out for a meal on the Sunday. Thirty non-Irish workers were taken out for a meal and the response from L was that the Irish staff get a bonus whereas the non-Irish don't. The claimant and her colleague then went to P the other proprietor. He spoke to them in the middle of the yard and said that L and the supervisor took them out and they felt sorry for the "them", the non-Irish being away from home and family, and was he "not allowed treat someone if he felt like it". The claimant felt very upset at this response. She felt worthless that thirty were taken out and she and her colleague were not asked. The next few days she felt numb having worked for the respondent for almost five years and then to be treated like that. L did not want to hear about it and there was no contact from the respondent. She then got a wage slip with "leaving" written across it and she also received a good reference. With no union or shop steward she felt she could not go back to work. She did not think of drawing Unemployment Benefit. She enjoyed her work and she and her colleague had no where to turn. She felt very hurt. It was a culmination of things that led to her leaving but for the meal issue she would still be working for the respondent.

The Tribunal then hear evidence from the second named claimant who commenced working with the respondent in 2001 and she worked similar hours to the previous witness. She had the same comment in relation to one group of workers being allowed to have their tables together whereas another group were separated. She worked hard and she said the respondent had a problem with her talking during the course of her work. Work was an important part of her day but the respondent did not want the claimant and the previous witness to have their tables together. She liked the nature of the work. She had a similar problem to the previous witness where she would finish work in August and would not be called back until after Christmas whereas new employees got forty hours per week. This all started when the non-Irish began working with the respondent and that was around three to four years before the claimant left.

Witness also said that L treated people unfairly and had her favourites. Some people were standing around doing nothing and she felt she used to break her back doing forty to fifty containers. It was a strict regime in the sense that if witness spoke to someone L would roar down to her. Other workers also hid her equipment and if the place was left untidy the respondent would give out. On mothers day one girl was allowed go home early whereas others had to stay and finish the work. A similar problem arose with the radio and when she mentioned to the supervisor about this and the fact she did not have her equipment to do her work the supervisor would not talk to her for weeks.

She loved her work and was very fast at doing the containers. Her mother also works for the respondent. As with the previous witness special orders were also given to the claimant and she felt she never got an easy job to do. There were no complaints about her work. She did not have a contract of employment and there was nobody to air a grievance with. It was only in the last year that they received payslips. She spoke to the supervisor about the problems encountered during the course of her work and felt that if she went to L she would not talk to her for weeks. There were no official breaks but you could have a cup of tea and the toilets were in the yard.

On 26th June 2006 the issue of the meal also upset claimant. She had worked there six years and some of those who were taken out for the meal had worked only four weeks at that time. There were about twenty to thirty Irish workers and the claimant was very unhappy when she was not invited for the meal. She also went to the respondent and she got the same response as the previous witness. She would not treat anyone like that. She had no further contact with her employer and did not get a reference. She also got the correspondence with “leaving” printed on it. She worked very hard but she felt that L had her favourites

Two further witnesses and former employees of the respondent gave evidence to the Tribunal. The first witness who is an aunt of Ms Bowles, one of the claimants, was employed with the respondent for almost eight years. The witness described the work situation at the respondent's as a joke by the time she decided not to return to it in the summer of 2005. She said that the ongoing “stuff” was never dealt with and that the respondent was practising favouritism towards some of the staff to the detriment of the claimants. She was aware that the claimants had complained to at least one of the proprietors about their conditions of employment. The second witness and mother of Ms Bowles resigned her position with the respondent in October 2005 following five years service there. By that stage “things got very bad in the end” with her employer. That included unwelcome name-calling and friction with some foreign staff.

Respondent's Case

The respondent is a medium sized enterprise engaged in a branch of the horticultural business and employs approximately sixty staff. Its proprietors are a husband and wife team. The husband made the major decisions at work. His wife with the assistance of a colleague managed the glasshouse operations where the claimants worked. The husband said he did not spend much time there and had limited dealings with those claimants. The witness described the work atmosphere as jolly and was not aware of any difficulties between local employees and foreign workers. In addition he had no knowledge of disputes over tables, brushes, doors, scissors and hours worked among staff in the work place. However, the witness acknowledged that contracts of employment were not issued to his staff including the two claimants.

His idea to hold a dinner for departing foreign workers and some local staff “backfired” when the two claimants approached him about that event on 26 June 2006. He was surprised at their reaction and manner as they complained about being kept uninformed of that event. He listened to their

complaints and tried to “take their comments in”. However due to the claimants manner of delivery and general demeanour he was unable to respond appropriately to them. A clear written grievance procedure was not available at the respondent’s at the time. The witness assumed that the claimants would return to work shortly after that encounter and waited for the situation to “settle down”.

The wife confirmed she was the immediate supervisor of the claimants and had overall responsibility for the operations in the glasshouse and its surroundings. The workforce consisted of both local staff and non-Irish nationals. The witness was also a good friend of her assistant and one of the claimant’s. She said that there was much banter and laughter at work and a degree of flexibility in work practices. However, she was not sure that favouritism was shown to certain employees over others. In accepting she called at least one of the claimants a racist and a dope the witness stated that this name-calling was not to be taken seriously. It was her impression that the claimants preferred not to work with the foreigners.

The supervisor either had no memory of the “girls” complaints or was not aware of them and felt that the issues informally raised by them were being addressed satisfactorily. She listed those issues as tables, heating, gloves, banging of doors, and disputes over the volume of the radio and missing scissors. She was aware there was some friction between some of the foreign workers and the claimants. Their grievances were dealt with informally as no formal procedures were in place at that time. She said that everything was fine with the claimants up until the meal event in late June for some of the employees. The claimants had neither been invited nor informed of that event.

That Monday 26 June 2006 had like all Mondays been busy at work and the witness nor her assistant found the opportunity to tell the claimants about that meal. They approached her later that day and expressed their disapproval and annoyance at being omitted from the news of that event. One of the claimants was particularly upset and as part of her discourse aired her views on what the employer could do with her job. When the witness heard that comment she in turn felt offended and referred the claimants to her husband whose idea it was to hold that meal. The supervisor did not get a chance to reply to the claimants’ complaints due to the nature and style of their presentation. Since the claimants did not return to work following that incident the respondent forwarded them their P45s. The witness was of the opinion that it was up to the more outspoken of the claimants and her good friend to “make a move”.

The next witness described herself as the supervisor of the greenhouse where the claimants worked. She also assisted the previous witness in the running of the enterprise. Among the functions of this supervisor was to ensure that the work under her control was done properly. Part of her job was also to deal with staff grievances and in her few years experience in that role she had never felt such grievances were “big enough to have to sort out”. She was generally aware of some of the claimants’ complaints but did not regard them seriously enough to merit a formal approach. Besides the claimants did not complain “on a day to-day basis”.

The witness described work on Monday 26 June 2006 as crazy and that situation prevented her from telling the claimants about a recent meal attended by many members of staff. The witness said she heard one of the claimants directly telling her supervisor “you can stick your job up your hole” later that day. Up to that time the witness had maintained close friendly contact with the claimants. She had no further involvement in the matter.

A former colleague of the claimants insisted she was not aware of any difficulties between the claimants and other staff. There was a good atmosphere at work with lots of banter and name-calling.

Determination

This was a case of constructive dismissal where the claimants had to show that they acted reasonably in involuntary resigning their employment citing wrongdoing on the part of the respondent. The evidence adduced from both sides exposed their flaws in the handling of this case. The claimants' action in terminating their own employment was based more on emotion than on mature consideration of their situation. However, the Tribunal cannot overlook the fact that the respondent did not have in place a clear, written contract of employment with a grievance procedure. That lack of this statutory document overweighs the claimants' contribution in this case.

In considering the circumstances of this case the Tribunal finds that the claims under the Unfair Dismissals Acts, 1977 to 2001 succeed and awards the claimants €1000.00 each as compensation under those Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

