

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

against

Employer

under

CASE NO.:

UD 1163/2006

UNFAIR DISMISSALS ACTS, 1977 TO 2001

Chairman: Mr. P. Hurley

Members: Mr. P Casey
Mr. J Mc Donnell

heard this claim at Ennis on 2nd August 2007 and 11th November 2007

Representation:

Claimant:

Rachel Stokes, Solicitor of Connolly Sellors Geraghty Solicitors 6& 7 Glenthworth Street, Limerick Solicitors,

Respondent:

Mr. Barry Walsh, A&L Goodbody, Solicitors, IFSC North Wall Quay Dublin 1

The determination of the Tribunal was as follows: -

Claimant's case

The claimant was employed in the respondent's firm for 23 years. The Respondent is a national company which manufactures measuring instruments. Prior to her dismissal the Claimant was employed as Customer Care Leader for the Shannon Region with responsibility for order management. She managed a team of 13 people and worked in excess of 65 hours a week. She worked from 8:00 AM to 5:45 - 6:30 PM at the Respondent's plant and a further 2/3 hours at home each evening. She also worked Sundays at home.

Initially she reported to RMcM in this role but in the latter months of her employment she reported to NC.

In the last 18 months of her employment, a major IT project ORACLE was in the course of implementation across the company. Input into this project was required from the claimant's area of responsibility and the claimant had agreed to assign one member of her team (EMcN) to this project team full time for the duration of this project. EMcN was second only to the claimant in terms of

experience and knowledge of the claimant's area of responsibility. The claimant's and the project team's long term intention was that EMcN would become the expert on the ORACLE in the claimant's operational area. The Claimant's role in the ORACLE implantation project was to support EMcN where necessary. Whilst RMcM had been the Claimant's team manager, he had also been available to support EMcN in her role on the project team.

NC did not have the same day to day knowledge of the ORACLE project as RMcM had had. NC was based in the United Kingdom and his role was overarching over all the Customer Care Leaders across Europe. RMcM had been based in Shannon. Once the Claimant was reporting to NC she found she was being asked by him to become more involved in the ORACLE project. The volume of her work increased and she had fewer hours to get on with her own job, which was itself extremely time-consuming. The project had been up and running for 12 months when NC took over. The Claimant told NC that her workload was already heavy and this is why EMcN had been assigned to the project.

EMcN asked the Claimant to sign an important document verifying that the ORACLE project had met all requirements for her operational area at a key stage of the project. The Claimant was not comfortable taking responsibility for this sign off and told EMcN that it was not her responsibility and that she should ask NC to sign the document. The Claimant explained her position to NC and to his assistant GH. GH said that only someone who understood the document should sign it. NC told the Claimant that he would support her decision. Later the ORACLE project leader asked her to attend a meeting with himself (MG), EMcN and external consultants engaged on the ORACLE project. The purpose of the meeting was to explain the document to the Claimant. The meeting took place one week before the Claimant left the company.

At the meeting all 100 pages of the document were examined and the Claimant was told that signing it was a mere formality. She asked why EMcN couldn't sign and was told that EMcN was the wrong person to sign it. At the end of the meeting the Claimant was still uncomfortable about signing the document. She spoke to RMcM about her concerns. RMcM was no longer involved in this area and but he told the Claimant he believed it was NC's responsibility to sign the document.

The Claimant did not sign the document. The document was left on her desk.

At this point the Claimant also discussed her difficulties with her workload with RMcM who advised the Claimant to speak to NC about her concerns.

On 16th June 2006 the Claimant met NC, then in Shannon, for meetings. During a working lunch with NC, GH, the Global Customer Care Leader and members of the Claimant's team, the Claimant asked NC if she could meet him privately latter. NC agreed and the meeting took place in afternoon. The Claimant told NC she wasn't capable of working these hours anymore. NC said he was aware of the hours she was working: he had received her emails at 11:00 PM and 12 PM. He told the Claimant she should forward correspondence to RMcM if that correspondence would previously have gone to RMcM and was now coming to the Claimant. However RMcM no longer had responsibility for the Claimant's operational area.

NC then said he wanted the Claimant to go full time on the ORACLE project. The Claimant asked him why he wanted this when there was already a full timer assigned to the project from her team. She also asked who would do her main job while she was assigned to the ORACLE project. NC told the Claimant he wanted her leadership abilities on the ORACLE project. He told her he was making the success or failure of the ORACLE project from the order management side her responsibility. The Claimant was 'gobsmacked'. She felt physically ill. She was being asked within

seven weeks of the 'go live' date to take responsibility for a project in which she had not had full time involvement. NC told the Claimant to offload her other work responsibilities to someone. The Claimant told him she didn't have anyone. NC asked her who was best and the Claimant said that EMcN was. NC told the claimant that if she felt it was the best decision then she should take EMcN off the project and advised her to talk to the project leader about it. The Claimant said she couldn't see what benefit there would be in taking EMcN off the project when she had the greatest working knowledge of it.

The Claimant did not know how to react to NC's proposals and at this point GH interrupted the meeting to take NC away. NC left, saying he would 'pop back if he got a chance'. The Claimant, NC and NG were all aware at this point that EMcN had health problems and had been advised by her doctor that she should not work 70+ hour weeks anymore. The Claimant had given EMcN a commitment in the previous weeks that this would not lead to her being taken off the ORACLE project team. This had been discussed with the HR manager and a decision had been made to hire someone to assist EMcN with her work on the ORACLE project.

After the meeting with NC the Claimant went to the bathroom to compose herself and then went back to her office. NC came back in and said 'are we okay?' The Claimant did not respond. NC told her it would be better if she talked to MC about assigning herself to the project in EMcN's place. He then left.

The Claimant went home and was very distressed over the weekend. She took some days off the following week and went back into work on Wednesday 21st June, when she went to see the HR manager, GT, and handed her a letter of resignation dated 19th June 2006. When GT read the letter she asked the claimant did NC really say what the Claimant had documented. GT was upset at the Claimant's decision and asked her did she really mean to go. She suggested that the Claimant might consider going on 'stress leave.' The Claimant said that this was not an option as she had seen a colleague lose her position following stress leave. The Claimant was looking for help in handing in resignation. GT had spoken to NC in her absence as she had been concerned when the Claimant had taken days off. GT told the Claimant she would need to talk to the General Manager (PS). The Claimant asked for three things: 1) that she would have no communication with NC, 2) that she would be allowed tell her own team of her decision and 3) that the company should be aware that she felt harassed into making this decision. GT told the Claimant to go ahead and tell her team she was leaving and that she (GT) would speak to PS. GT asked the Claimant to come out to lunch with her. The Claimant then went back to her office and told her team she had resigned.

Forty-five minutes later GT came into the Claimant's office and told her that PS, the general manager, had emailed the Claimant's letter to NC. NC had responded that the Claimant had misunderstood his decision. GT told the Claimant that NC's manager, TP, would come to Shannon talk to her. She asked the Claimant would she meet NC? The Claimant refused, saying she felt very emotional about these events and couldn't face NC. She told GT if NC was in Shannon she (the Claimant) couldn't come into work. GT said that was fine and on Thursday the Claimant did not come into work as NC was in the office.

On Friday 23rd June the Claimant came into work and GT asked to meet her. GT said she had been on the phone all day Thursday discussing the Claimant and said the company was keen not to lose her. GT had been instructed to do whatever it took to get the Claimant to stay. She said TP would not be able to come to Shannon. The Claimant felt that if NC's manager was not going to, then where was she to turn?

On Saturday 23rd June the Claimant met with GT in a hotel. The claimant hoped that the company would support her. GT asked “what could the company do to make her stay?” She proposed the following solution: 1) GT asked the Claimant was she willing to come back as a team member? This would mean a demotion for the Claimant as she was currently a team leader, 2) the company would guarantee the Claimant would only work a 37.5 hour week in her current role and 3) the Claimant could report to somebody else (unspecified). The Claimant was horrified at the first suggestion and didn’t see how the second or third suggestions were feasible. She left the meeting feeling she had got no further and nothing practical had been offered to her.

The Claimant later heard from the receptionist in the company that her job had been advertised internally.

On 20th July GT wrote a letter to the Claimant accepting her resignation but offering a meeting and asking the Claimant to contact her by 4th August if she changed her mind. At this point the Claimant had lost confidence in the company and made no further contact. She wasn’t sleeping and was depressed. She consulted her GP who arranged for her to see a psychologist. Her GP advised her it would be best to take 6 months out of work until she was finished with the psychologist. The Claimant was in receipt of disability benefit until 13th November 2006 and, following that, of unemployment assistance until 15th January 2007. She is currently earning €25,000: she had been earning €46,000 with the Respondent.

Under cross examination the Claimant agreed she had been aware of the Respondent’s grievance and harassment procedures but had not invoked them. She hadn’t thought about procedure when she left: she had been too distressed. She agreed the 16th June 2006 was the first time she had formally brought her difficulties to NC although he had been aware of the hours she was working. It would have been inappropriate to raise her problems with NC’s boss at the working lunch on 16th June as this was the first time she had met him. She disagreed that NC told her to consider his suggestions and come back to him and was adamant that NC had given her direct instructions on how her role should change. On 21st June she told GT she was happy with her decision because it was the only decision open to her. Her initial letter of resignation had been a plea for help: she had been hoping someone would say “we will not let you resign” but instead 30 minutes into the discussion she was told to tell her team she was leaving. She denied that she did not take seriously the company’s attempts at getting her to stay. She had not been reassured by anything GT had offered. She was not offered the grievance procedure in her meeting with GT. She had no difficulty with NC, her difficulties were with her workload. She denied that she was unwilling to engage with the company following the 21st June.

Respondent’s case

GT gave evidence that she was HR manager for the Respondent in Shannon responsible for 100 full time employees. She had worked with the company since March 1981. She had a degree in HR management and had worked in HR for 15 years. Prior to 21st June she had no complaints from the Claimant: no absences, no illnesses, no difficulties. The company had two pastoral care options for employees: there was an anonymous on line ombudsman, and an employee care program had been in operation since 2002.

When the Claimant handed in her resignation to her on 21st Jun 2006, GT was ‘gobsmacked’. She asked the Claimant to reconsider but the Claimant said her mind was made up. She took the Claimant out to lunch but they didn’t discuss her resignation. She recalled the Claimant saying she was happy with her decision.

When the Claimant left to tell her team the news GT went to PS and then called NC. NC said he

would come over and did so that evening. GT phoned the Claimant to ask her would she meet with NC but the Claimant refused. PS gave GT a direction that she was to do all in her power to get the Claimant to stay. GT took this very seriously. On Friday 23rd June GT asked the Claimant to reconsider but she said she didn't want to. She received the Claimant's letter of 24th Jun 2006 and was surprised, especially as it referred to bullying. At the meeting in the hotel with the Claimant GT did not propose that the Claimant should return as a member of the team. She was always going to be Customer Care Leader. The company wanted the Claimant back in her old role. Had the Claimant availed of the grievance procedure, her complaint would have first gone to GT and then to GT's superior. The company was willing to explore options to get the claimant to stay. The proposals in relation to a 37.5 hour week and a change in line manager were put in good faith. The Claimant offered no solutions of her own. GT asked the Claimant to reconsider her decision on five separate occasions.

Under cross examination GT said she was taken by surprise at the Claimant's initial letter of resignation and wanted to talk to NC before making any proposals. GT felt that the Claimant wanted to leave. GT felt that she knew the Claimant fairly well and that her mind was made up. She did not make any allowances for the Claimant's state of mind. She felt the Claimant would have to speak to NC if the issue was to be resolved. The Claimant had not suggested meeting TP, but if she had, a meeting would have been facilitated. In her letter of 28th June GT did not set out a solution because she wanted to meet the Claimant face to face. GT agreed that the Claimant had taken steps as far as step 3 of the company's grievance procedure even though the procedure had not been formally invoked. She agreed TP was not brought in to solve the problem. GT had no recollection of the Claimant ever having been offered a demotion. The company advertised the Claimant's job internally on 12th July 2006 because her resignation had not been retracted and they needed to fill the position. There were no internal applications for the job. GT agreed the Claimant worked very long hours. When she offered the Claimant a 37.5 hour week, her intention was to put existing resources in place. There was no question of cutting the Claimant's salary. External applicants for the Claimant's job were interviewed toward the end of August 2006.

NC gave evidence that at the time of the Claimant leaving the company he was Customer Care Leader for Europe, the Middle East and Africa (EMEA). He joined GE Sensing in the United Kingdom as a Design Engineer and worked his way up to Engineering Manager. In 2004 he became Customer Satisfaction Manager with five senior staff reporting to him. On May 1st 2006 he became EMEA Customer Care Leader with overall responsibility in his area for nine GE sites, with a total of about 100 staff. As Customer Care Leader for Shannon, the Claimant reported directly to NC after his appointment to EMEA Customer Care Leader. NC has had experience of managing many different teams of staff in his 25 years service with GE Sensing. The Claimant managed a staff of about 10 people in Shannon. Her team's role was to process customer orders, respond to customer queries and carry out the administrative side of sending orders. She had been in this position for a considerable time. NC found the Claimant knowledgeable and easy to get on with. She was proficient and respected in the organisation. He felt they had a good working relationship and communicated comfortably. The Claimant's statement that there 'was never a cross word between them' was correct. Her statement that she 'couldn't deal with the man' was also correct from June 16th onwards. They never communicated after June 16th. NC was based in the United Kingdom and had four meetings with the claimant between May 1st and June 16th 2006. They spoke on the telephone about 3 times a week. The Claimant's previous boss had been located in the office next to her. The Claimant never complained to him about her working hours although he was sure it was true she worked long hours and often worked from home. Emails were sent to him late at night from the Claimant. As her role involved significant responsibility she was free

to conduct it in a way that would suit her. The emails she sent were of the normal business type. There was nothing alarming in their nature or frequency. The aim of the ORACLE project was to retire the old computer system and install a new one i.e. ORACLE. The system is now operational. In mid 2006 the anticipated 'go live' date for ORACLE was August 2006. This was postponed and ORACLE eventually went live in May 2007. By mid 2006 the project had been running for over a year. As the project came close to the go live date, there was more of a requirement for input from the day to day function. It was now the biggest issue for the Shannon site and could no longer be done in the background. On May 1st NC met the Claimant specifically regarding the ORACLE project. Between May 1st and June 16th NC had 22 meetings regarding the ORACLE project. During this time he reported to J van P regarding the ORACLE project. One extra person had been recruited in Customer Care in Shannon to work on the project and some resource was available from GE Boston to work with the Customer Care team in Shannon.

An email dated 30th May 2006 from NC to the Claimant was handed to the Tribunal, directing the Claimant to recruit two extra temporary employees to assist with the implementation of the ORACLE project. In the week following 16th June some people came over from Boston to Shannon to help with the implementation of the project.

It was NC's view that the Claimant was the appropriate person to review the departmental operating procedure relating to order management for the project. This was the document that the Claimant had difficulties with. As this was the Claimant's department it was up to her to review the document, to ensure that it was appropriate and sign off on it. NC did not feel that this was a big issue at the time. The Claimant never brought any of her concerns in relation to the document to NC. In mid 2006 J van P was appointed Global Customer Care Leader. He travelled to all the customer care sites in order to get to know his team. On Thursday evening 15th June 2006 J van P, NC and GH flew into Shannon. They visited the plant all day Friday June 16th on a 'get to know you' session. They had meetings during the day and an informal lunch with the team. This was a stand up affair in the office and lasted for about an hour: staff asked J van P questions informally. The Claimant's interaction was fairly routine and relaxed. There were no hot topics. The ORACLE project was the biggest single issue the team wanted to know about.

After lunch NC dropped into the Claimant's office to talk about ORACLE for about 20 minutes. The discussion was about how to find time for the Claimant and her team to spend more time on the ORACLE project. NC was mindful that the Claimant already had a full time job. He asked her to think of ways she could free time up to spend on ORACLE. He said it would be ideal if the Claimant could spend her afternoons working on ORACLE but they would have to organise for her other work to get done. He expected to have a later discussion with the Claimant about additional resources for the day to day business. He asked the Claimant to revert to him with suggestions regarding how she could free up part of her time for ORACLE. He knew the Claimant was less than 100% happy but the meeting was amicable.

On Monday GT informed NC that the Claimant was sick. On Tuesday GT told him that the Claimant would be back in the office on Wednesday, so on Tuesday morning NC booked a flight to Shannon for Thursday. When he read the Claimant's letter of resignation he was astounded and disappointed and believed that there had been an enormous misunderstanding. His immediate priority was to resolve the misunderstanding. He telephoned PS, the plant manager in Shannon, to discuss the Claimant's letter. NC was in the Shannon plant by 5 PM on 21st June in order to discuss the matter with the Claimant but she had left the plant. Before he became aware of the Claimant's resignation, J van P had sent her an email thanking her for Friday and

asking to be kept posted on any developments. She could have responded to this email setting out her issues.

NC would have been happy to have the Claimant back. This was the unanimous view of all involved. When the Claimant was offered various alternatives with a view to resolving the situation and getting her back to work, there was no suggestion that any alternative would involve a reduction in salary. She was not paid an hourly rate.

NC was further shocked and horrified by the Claimant's second letter, which implied inappropriate behaviour on his part and indicated to him that there was less and less probability of the Claimant coming back to work. TP was the Chief Executive Officer of the entire European operation and, as such, would not have become involved in this issue. There was a large gap between the Claimant and TP in the organisation. At the time the internal job advertisement was posted, there was a reasonable chance that the Claimant would not have come back. Nonetheless none of the steps taken to recruit her replacement were irreversible.

Under cross examination NC agreed that he had been aware that the Claimant had a difficulty with signing off on the ORACLE project from an order management perspective. He did not recall how this issue was resolved. It was in his view a relatively routine matter although he was aware it was a big issue for her. He agreed that the Claimant may have asked him to come to her office on June 16th. The Claimant had overall responsibility for ORACLE where it impacted on customer care. NC did not accept that he suggested that the Claimant replace EMcN on the ORACLE project. No written denial was ever sent to the Claimant in response to her claim that she had been expected to be involved in the ORACLE project full time because it was felt that an outright denial might have inflamed the situation. None of NC's superiors contacted the Claimant because the company took the view that she was only comfortable dealing with GT. NC would have been surprised if TP had come over to Shannon to deal with this particular issue. The company never got to have a detailed dialogue with the Claimant in order to agree a mutually satisfactory way forward.

In answer to questions from the Tribunal, NC reiterated that the company would not have considered any of the proposals to the Claimant to have involved her taking in a lesser job. It was never envisaged that she would return as a team member rather than team leader. NC did not agree that the company offered this option. The role of Customer Care Manager was not going away with the implementation of the ORACLE project. NC could give no indication why his relationship with the Claimant had broken down. Up to Friday 16th June 2006 there had been no indications that anything was wrong. NC noted that she was unhappy on this day and made a mental note to catch up with her about it on Monday. In general terms the Claimant's position was relatively senior. At that level the amount of hours people work is not part of the deal. The company measures performance by other factors. The Claimant had a contract of employment specifying a 37.5 hour week so the company would have had no grounds to reduce her salary if she stuck to that.

DETERMINATION

The Tribunal has considered the evidence adduced by the Claimant and the Respondent. The Tribunal has also considered the submissions made on behalf of the claimant and respondent. The issue for the Tribunal is whether the Claimant was dismissed by construction under the definition of dismissal under Section 1(b) of the Unfair Dismissals Act which provides as follows:-

“The termination by the employee of his contract of employment with his employer,

whether prior notice of termination was or was not given to the employer, in circumstances in which, because of the conduct of the employer the employee was or would have been entitled, or it would have been reasonable for the employee to terminate contract of employment without giving prior notice of termination to the employer.”

The Tribunal is of the view that that the Claimant did not act reasonably in refusing to avail of the respondent’s established grievance procedures and in refusing to engage with the Respondents in their offers of redress and resolution. The Tribunal would stress that it was a feature of the Respondent’s approach to the resolution of the Claimant’s complaint that no reduction or alteration of the Claimant’s salary or pay was contemplated. The Determination of the Tribunal is influenced by the stated intention of the Plant manager at Shannon (PS) to prioritise the resolution of the Claimant’s complaints. The Tribunal notes that the Claimant as Customer Care Leader for Shannon never raised her concerns in relation to signing off on the ORACLE document with NC, the company’s Customer Care Leader for the greater, Europe, Middle East and Africa area.

The Tribunal is of the view Claimant in her meetings with NC did not make the latter aware of the extent and depth of her distressed state.

The Tribunal would advert to the statement in Redmond’s *Dismissal Law in Ireland* at paragraph 19.18 that just as an employer for reasons of fairness and natural justice must go through disciplinary procedures before dismissing, so too an employee should invoke the employer’s grievance procedures in an effort to resolve his grievance. The duty is an imperative in employee resignations.

The Tribunal finds that there has been an unjustified reluctance on the part of the Claimant to engage with the Respondent’s grievance procedures and a reticence by the claimant to engage with the respondent’s management such as to render her actions in terminating her employment unreasonable.

The claim for constructive dismissal by the claimant under the Unfair Dismissals Acts 1977 to 2001 therefore fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

