

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

UD291/2007

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr. B. Kealy
Mr B. McKenna

heard this claim at Dundalk on 5th February 2008

Representation:

Claimant(s) : Ms. Maureen Finlay, Advocacy Resource Officer, Citizens Information Centre,
1 Mayoralty Street, Drogheda, Co. Louth

Respondent(s) : Gerry Faulkner, Dundalk Resource Centre, 30 Clanbrassil Street, Dundalk,
Co. Louth

The determination of the Tribunal was as follows:-

Respondent's Case:

The Chairperson of the respondent company and member of the Board of Management gave evidence. She explained the background of the company. When it was originally set up staff worked on a voluntary basis offering support to parents in the community with home visits, especially to first time mums. In 2002 the HSE (Health Service Executive) took over the funding of the company and XXXX (title the claimant held) were paid £3.00 per hour working an eight-hour week. Most of the staff had other employment elsewhere.

On June 21st 2006 the witness was made aware by the Co-ordinator of issues with the claimant. The witness explained that the Co-ordinator supervised the XXXX and the witness supervised the Co-ordinator. She held monthly meetings or "supervisions" with the Co-ordinator to assess what had happened over the previous month. Two places had been offered to the respondent for a training course run by the HSE. Staff names were put in a hat and the claimant and one other staffmember were selected. However, it transpired that the two places were revoked by the HSE. The Co-ordinator contacted the HSE and managed to retrieve one placement on the course. The Co-ordinator assessed the situation and felt that the claimant had received more

training than the other staff member. She decided that this staff member would get the placement. The Co-ordinator tried to contact the claimant to explain but could not speak to her until the day before the course was to commence. The claimant was not happy with the decision. The witness decided that a meeting should be held with the claimant.

The witness told the Tribunal that the Co-ordinator contacted the claimant by telephone and asked her to attend a meeting but she refused. The witness explained that it was her role to ensure the issue was resolved. On July 17th 2006 the claimant was written to and requested to attend a meeting. She was also informed that a Director on the Board of Management and ICTU representative would act as a mediator. Further letters were sent to the claimant to meet the mediator and the staff support group.

The witness said that a lot of time was lost setting up meetings that the claimant never attended. After some time she did attend a meeting with the staff support group. The claimant stated that she was being bullied and could not get a fair hearing. On August 29th 2006 the claimant was sent a letter stating she was suspended with pay until a further meeting would be held on September 5th 2006.

On cross-examination the witness explained that she had known the claimant since 1997 when they both commenced with the respondent as volunteers. When asked, she explained that in 2002 the claimant had raised the issue of the payment of annual leave for the staff. Having investigated the matter it was resolved and all staff received a back payment. The witness said that it had been an oversight and was not intentional. When put to her she said that all staff were given as much training as was available.

When asked by the Tribunal, the witness stated that the claimant worked twenty-three and a half hours a month. When asked was the claimant dismissed, the witness replied that her contract had not been renewed. It was a collective decision by the Board of Management.

The Co-ordinator gave evidence. She explained that she overseen the day to day running of the company and was the only full-time worker. Her role was to meet with the staff (XXXX) and discuss the families they visited. A family programme usually lasted a year but could be extended. If a programme were to end, the family would be informed one month before the termination.

The witness explained that there had been a number of issues with the claimant. The claimant had a number of families that she visited to give support. The Co-ordinator explained that she, the claimant, had been visiting the same family over a period of seven years. She informed the claimant at a supervision meeting on June 20th 2006 that the programme for this family would terminate. The following day she received a telephone call from the family's social worker. He informed her that his client had asked him to ring the witness. The parent told the social worker that her XXXX (claimant) had said if the social worker rang, the programme would have to be extended. It was agreed to extend the programme until December 2006. The witness told the Tribunal that she was very annoyed over the matter and felt the claimant had stepped outside the "boundaries" of the job. She requested to have supervision with her supervisor, the Chairperson.

The witness explained what had occurred concerning the places on the training course and her decision as to who would attend it. She explained that she had tried to contact the claimant to inform her but could only get an answer phone. She told the Tribunal that she did not want to leave the news as a message. She agreed that she should have informed the claimant of the course sooner

than a day before the course was to commence. When she did contact the claimant, the claimant told her that she already knew. The claimant was very annoyed. The witness told the Tribunal that she apologised to the claimant and told her she could go to the Board of Management. The witness asked the staff support group to speak to the claimant.

When asked by the Tribunal, the witness said that there had been a previous problem with another family the claimant visited. The claimant had become too involved with a family and the witness asked the claimant to "pull back". The claimant told the witness that if she did she did not know what the mother would do. The witness felt that the respondent could do no more for the family and felt there were other agencies available to help them.

On July 17th 2006 the claimant was asked to attend a meeting with the witness and a mediator. A copy of the witness's report was also enclosed. The claimant declined. The witness went on leave and on her return spoke to the proposed mediator. There had been no contact. The witness contacted the claimant and was told that she was coming to the meeting, that the witness was bullying her and that she wanted to meet with an independent mediator/person. In August 2006 a letter was sent to the claimant from the staff support group inviting her to a meeting.

On cross-examination the witness again stated that the social worker had told her that his client had been told by the claimant to ring him so her programme would be extended. When asked, the witness said that she had told the claimant, after she had been accused of bullying her, that there were policies and procedures in place to deal with it. She could discuss the matter with staff support.

When asked by the Tribunal, the witness stated that the claimant had been given a copy of the policies and procedures but had not signed for it. When asked why the claimant had not attended the meetings, she replied that the claimant had said that there was a conflict of interest with the people attending them. When asked, she said that she have monthly supervision meetings with the claimant but could not recall if they had met in July or August because it was the holiday period. When asked had she not spoken to the claimant regarding the telephone call from the social worker, she replied that the claimant undermined her and by-passed her. The witness said that she felt the claimant felt she did not have to take direction from her.

One of the staff from staff support gave evidence. She explained that the group had been set up by the Board of Management to assist if problems arose with the staff. When asked, she stated that she was a member of the Board of Management. At a discussion at a Management meeting it was decided to offer the claimant a meeting with the staff support group and she was written to.

The meeting took place on September 5th 2006. The witness, another member of staff support, the claimant and a friend attended. The witness said that the claimant was hostile towards her and could not understand why the claimant had a conflict of interest. The claimant agreed to meet the other member of staff support.

On cross-examination the witness agreed that she was a member of the Board of Management and worked in staff support. When asked how the mediator selected to meet the claimant was able to mediate, as he was a member of the Board of Management, the witness replied said that the Board felt he could do it. When asked about the claimant's request for an independent person, the witness replied that it was inappropriate at the time.

A second member of staff from staff support gave evidence. She explained that she was also a

member of the Board of Management since 2006.

She explained that on September 5th 2006 she met with the claimant, her friend and the previous witness. The claimant handed in a letter and they reviewed the contents. The claimant was very annoyed and said there was a conflict of interest with the other staff and management. The claimant said she would meet with the witness. The claimant told the witness that the only way to resolve the matter was to get an apology from all involved in the matter and an independent person onboard. The witness told the claimant she would inform the Board of Management. The Board of Management decided not to apologise.

The witness stated that the claimant would not listen to the voice of reason. When asked, she said that she did not have personal friends on the Board of Management.

Claimant's Case:

The claimant gave evidence. She explained that she had commenced with the respondent in 1997 as a volunteer and became a paid employee in 2002. She had a contract of employment.

In 2002 she had enquired about the non-payment of holiday pay to all staff but was informed that staff should have to work a twenty-hour week to be entitled. In 2003 she commenced working three hours a week with a postnatal group under a different Co-ordinator. In July 2005 she again broached the subject of paid annual leave. The matter was investigated and the situation was rectified with back pay paid. The claimant said that relationships after this were not good. She felt the members of the Board of Management were "all linked".

The claimant explained what had occurred in respect of the two-day course. The claimant had cancelled her three-hour postnatal course to attend the two-day course. A colleague informed the day before the course was to commence that she was not attending, there was only one place available. At 3pm that day the Co-ordinator contacted her to tell what had happened. The claimant said that it was all forgotten about.

At the claimant's supervision session with the Co-ordinator she was informed that she was to meet with staff support and that there was a letter in the post for her. The claimant said she was very puzzled. The Co-ordinator discussed the families she visited and asked, "Did she feel she made a difference?". The claimant said she was taken aback and explained the families' situations. She was informed the visits would stop and the claimant said she told the Co-ordinator she did not think it was a good idea.

The claimant told the Tribunal that she was shocked and horrified at the contents of the letter dated July 17th 2006. The claimant explained what had transpired in respect of the family with the social worker. The mother of the family had decided to contact the social worker. The claimant said that she did not or had not known this social worker.

On return from the Co-ordinator's leave, the claimant received a call to attend a meeting with the Co-ordinator and a mediator. This mediator was a member of the Board of Management and a member of the ICTU (Irish Congress of Trade Unions). The claimant told the Tribunal that she felt the Board of Management and staff were "all close". She went for advice and was advised to talk to an independent person in regard to job. She told the Co-ordinator there was a conflict of interest. She was told to contact the mediator appointed. She informed him that there was a conflict. She

was told she had broken boundaries and she said that she wanted an independent mediator. The mediator told her he would sort it out but he never got back to her.

She met with staff support and spoke to one of the staff. She never heard any reply to the letter she submitted on the day of the meeting. The Chairperson contacted her and informed her she was suspended from the postnatal group but could not explain over her mobile phone. She later received a letter stating her contract would not be renewed. She said that she was never given an opportunity to bring in an independent mediator, she had never broken any boundaries and that the Co-ordinator had assumed she had made the social worker contact her.

The claimant gave evidence of loss.

On cross-examination she explained that she had been selected in 2003 to join the postnatal group that was run by women's health. When asked, why she would not attend any meetings, she stated that it would not have been a fair hearing as all the members were friendly. She again stated that she had nothing to do with the family asking their social worker to contact the Co-ordinator. She explained that the social worker might have known about her visits, as the family would have told him.

When asked by the Tribunal if an apology would have been acceptable, she said she did not think she would get one. When asked about the thought of being bullied and a method for dealing with it, she replied that she could not have brought the issue to management. When asked, she said that there were other members of the Board of Management but she had not been offered the opportunity.

Determination:

Having heard all the evidence adduced the Tribunal finds the claimant was not unfairly dismissed. The respondent had offered on numerous occasions to meet the claimant but she declined. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)