

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

UD1280/2006

MN846/2006

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 N. O'Carroll-Kelly BL

Members: Mr M. Murphy
Mr J. Moore

heard this claim at Cavan on 30th January 2008
and 25th April 2008

Representation:

Claimant(s) : Mr. Frank Martin BL instructed by:
Garrett J Fortune & Co, Solicitors, 11 Church View, Cavan

Respondent(s) : Michael J. Ryan, Solicitors, Athbara House, Cavan

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant gave evidence. She stated that the respondent had employed her since May 7th 1990 doing administration work in an office on the grounds of the respondent's family home. She explained that the respondent business entailed quarrying and that they had two sites.

When she was first employed the late owner had run the company but since in death in 2002 his two sons (known as SN and GN) overseen the running of it. There were over twenty employees. She explained that she had got on well with her employers. She had told the mother of SN and GN (known as MN) that she was getting married but to keep it quiet, as no one else knew, even the families. She told the Tribunal that she had gotten married in October 2006 and had taken a few weeks honeymoon.

On November 6th 2006 at around 2.30 p.m. the door banged and SN stormed into the office. He

spoke abusively to the claimant, shook his fist at her and told her not to speak to his mother “like that”. He told her the office was to be moved to one of the quarries and she would be moved too. The claimant said that she was terrified and thought he might strike her. He left the office and later returned, apologised to the claimant and again left. The claimant said that she did not know what to do but switched off the computer and drove home.

The claimant told the Tribunal that she had not been well since the incident and had attended counselling. The claimant told the Tribunal that she had enjoyed working for the respondent until the day of the incident. She stated that no one contacted her after the day of the incident to apologise even though she only lived ten minutes away. She went to her solicitor two days later for advice. Letters were exchanged between her and the respondent’s solicitors.

When asked how she felt about the contents of the respondent’s solicitor’s letter of November 20th 2006, she said that she had had no problem meeting the respondent as long as her solicitor was present. Correspondence continued to cross over between solicitors. The claimant stated that she could not return to work. She had no contract of employment and there was no grievance procedure in place.

On cross-examination she said that herself and MN had got on very well together. MN had been secretary and director of the company and had signed off on company cheques for the claimant. She stated that the set up in the company was informal; she would have her lunch in the main house.

When asked she said that she had remembered Friday November 3rd 2006 and the conversation she had had with MN. The claimant explained that on her return from her honeymoon that Monday there had been no offer of congratulations of good luck on her marriage. She felt MN had been very cool with her that week even though she had brought MN a present from her honeymoon. On the afternoon of Friday November 3rd MN entered the office and “threw” an envelope at the claimant and told her to take it. It was a €100 voucher for a hotel. Later that afternoon she approached MN to get some cheques signed. She thanked MN for the gift but said that she was disappointed about how she had been treated. MN told her she should have asked for what she wanted. The claimant replied that if “the boss man” had been around she would not have been treated like that. MN again asked why she had not asked for what she had wanted. She told MN to forget about it. The claimant stated that they had never had a cross word before.

When asked, she said that she and her husband had a small celebration on their return from their honeymoon but no one from the respondent company had been invited. When asked, she stated that she had not raised her voice towards MN. She said that she could not dispute if MN had been upset about the incident.

The following Monday (November 6th) the claimant wished MN good morning and later entered the house to use the bathroom. MN raised the newspaper she was reading to her face. When asked, she stated that her moods had not changed after her marriage. When asked if SN, during the afternoon incident, asked could they start again she refuted that he had. She said that she never told SN that she was going home and he did not apologise again. She said that she had wagged her finger at him. She said that she had not told him she would get him or make him pay. When asked, she said that she still retained a key to the respondent’s office.

When asked, she said that she had signed the T1A form on November 20th 2006. When put to her she said that she had not received any calls from MN.

When asked, she said that she had not acquired any employment since she had left the respondent. She said that she was not capable of doing it.

When asked by the Tribunal, she said that she had experienced nightmares of the incident with SN. The fear has never gone away. She said that she felt an apology or a promise that it would not occur again it would have relayed her fears. She had reported the matter to the Gardaí.

At the resumed hearing the claimants GP gave evidence that her client attended her practice on the 6th November 2006 at 5.30pm and on a regular basis since that date. She was suffering from hypertension, high blood pressure and had a tremor in her hands. She is unable to sleep and the high blood pressure which she has developed is tension related and would prevent her from returning to work. She did not suffer from high blood pressure prior to the 13th November 2006.

Respondent's Case:

The wife (MN) of the late owner of the respondent company gave evidence. She said that she had known the claimant for many years and had gotten on very well with her. She said they were like "sisters" and never had any previous rows.

The witness told the Tribunal that the claimant had told her that she was getting married abroad but that it was a secret. The claimant took her leave but on her return the witness said that she, the claimant, was very quiet. The witness said that she thought the claimant's new husband had changed her.

On November 3rd 2006 the claimant said that she had been surprised that there had been no present for her on her return from her honeymoon as she had been very loyal to the company. The witness said that she had given the voucher to the claimant as a small gift and told her she would get a wedding present later. The witness said that she could not believe the tone of voice the claimant had used and that she had been very upset about the incident. She said that the claimant had done all the talking that day. When asked how the incident had affected her, she said that she had been very disappointed and annoyed. She told her son, SN, over the weekend.

When asked, she said that she had tried to contact the claimant on her mobile phone on Tuesday November 7th at lunchtime and again two days later. She explained that she did not know the claimant's landline number.

The second witness gave evidence that he was a director of the company and the claimant worked for the company doing wages and invoicing. He had contact with the claimant once a week. The claimant worked for the company for sixteen years and there were no difficulties between them. The claimant got married in October 2006 and was on holidays for two weeks. The witness gave evidence that his mother had informed him that the claimant had spoken crossly to her about not having received a wedding present. His mother was very upset when she spoke to him.

The witness went on to give evidence that he met with the claimant and told her that he did not like the way she had spoken to his mother. He informed the claimant that her office location would be moved over to the quarries if the incident was repeated. The claimant replied that she would not be moved and logged off her computer and told him she was going to phone her husband. The witness apologised and said "we would start again". The claimant replied that she was leaving and said "I

will get you for this”. The claimant’s departure left the office with a backlog situation.

Under cross-examination the witness admitted that he had raised his voice slightly during his conversation with the claimant. He denied that he had banged on the door, kicked the desk or had used foul and filthy language. He accepted that the claimant had given good service to the company and would not expect the claimant to return to work if she had suffered an assault in the workplace. He recalled that the claimant was crying during the course of their conversation. He did not contact the claimant when she was unfit for work as he did not want to be harassing her. In reply to questions from the chair he stated that the claimant’s life would have been simpler and easier if her office location had been moved.

Determination

The Tribunal are satisfied after hearing all of the evidence and considering all of the documentation produced before it and in assessing the behaviour of both the Claimant and the Respondent that the Respondent was in breach of several implied terms of the Claimant’s verbal contract of employment. The Tribunal finds that the Respondent breached the implied terms of the Claimant’s contract in that it breached its obligation to maintain a level of trust and confidence with the Claimant, it failed to treat the Claimant with respect and subjected her to violent and humiliating behaviour. In all the circumstances it was reasonable for the Claimant to terminate her employment with the Respondent.

The Tribunal awards the Claimant the sum of € 25,000.

The Tribunal make no award under the Minimum Notice and Terms of Employment Act, 1973.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)