

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD205/2007

against

3 Employers

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. P. McGrath

Members: Mr. M. Kennedy
Mr. B. Byrne

heard this claim at Naas on 6th June 2007
and 30th November 2007
and 29th April 2008

Representation:

Claimant: Mr. Eamon Devoy, TEEU, 5 Cavendish Row, Dublin 1

Respondents: Mr. Alex White B.L.

Instructed by: Mr. Ian O'Herlihy, Arthur O'Hagan, Solicitors,
Charlemont Exchange, Charlemont Street, Dublin 2

The determination of the Tribunal was as follows:-

Principal's Evidence:

The witness said that he offered to assist the Claimant on the last day of the academic year. The Claimant said he would have no problem getting a new job. However, if he had changed his mind about resigning even up to late May, they could have done something for him, but after that, it was too late, the vacancy was filled. The letter of 19 May 2006 indicates this. An advertisement was put in the paper in May 2006 to get a temporary replacement for the Claimant. The witness met with Ms. C. from ASTI and the Claimant in July. They were shocked to find out that his job was filled. Letters were exchanged with ASTI in July & August. The reason why they did not allow him to rescind his decision to resign was because the position was filled, and no other job was available. The witness was satisfied that no pressure was put on him to resign, that it was his own decision. He told him to talk to him anytime, but the Claimant didn't do so. They did not want him to resign, in fact he gave him a good reference.

He said he could not act on his own on employment issues, but had to put them to the Board. He was not aware that the Claimant suffered from stress, he only discovered this at a late stage, and told him to get the help he needed. Asked about a Health & Safety statement, he said that the school had one, but they had not done a risk assessment regarding teachers under stress, and that this was a weakness. Asked about pressing the Claimant in front of others about his resignation, he said he only sought clarification, and had kept his voice low, but when the Claimant reacted badly, he stepped away. The Claimant was given time to change his mind, but when he did so it was too late, the job had been filled. The Board were informed of his resignation in May 2006. The Board had accepted his resignation, but that there was no record of this acceptance. The Claimant had fundamentally disagreed with the Board's decision to expel a particular student.

CB's evidence (Chairman of The Board of Management):

The witness said that a controversy arose over some defamatory statements by students about teachers on the Bebo website. Two boys had been warned to desist, but persisted and were expelled. The Board was aware of the Claimant's disagreement with this decision, but had asked him to remove himself from the controversy. The Board did not have an issue with him about this. They were taken aback at his decision to resign, and thought it disproportionate. The Board's view of his letter of 22 May 2006 was that he was gone, that he had resigned. They were shocked by his attempt to rescind his resignation, it was a bolt from the blue. Some people were not available in order to have an emergency meeting of the Board in July 2006. The view of the Board was expressed in their letter to the Claimant on 17 August 2006. No medical report was ever received from the Claimant, only certificates. He said that the Board accepted that the Claimant resigned in May 2006. The school did have a Safety statement, but not a risk assessment in relation to teachers' stress, although the Safety Statement is constantly under review. He said that he had no knowledge that the Claimant was suffering from stress.

Submission by the Respondent's representative:

Resignation was a true one, not contingent. Resignation does not require acceptance by the Employer in law. Resignation cannot be withdrawn without consent by the Employer. The Claimant submitted his resignation freely. He needed to show that his stress was so overburdening that it led to his resignation, but there was no evidence for this. He had changed his mind, but he was too late, the position was filled.

Submission by the Claimant's representative:

It was not a true resignation (Redmond says that if person is unwell, it is not a resignation). The Claimant was suffering from stress. He submitted that the Principal filled the vacancy without the agreement of the Board.

Determination:

The Tribunal has carefully considered the three days of oral evidence it has heard in this case.

The Tribunal found the Applicant to be a credible witness and there was no doubt that his contribution to the school in which he worked was inordinate and such dedication is to be admired.

It does appear that the Applicant became overwhelmingly involved in the defence of a student who was in the process of being punished by the Board of Management. The Tribunal cannot and does not have a view on that process other than to observe that the Board is entitled to conduct its affairs under its own constitution. The Board did not object to the Applicant's representations on behalf of the boy and the Tribunal has no reason to disbelieve the Board's contention that the intervention in any way affected both the School's and the Board's view that the Applicant was an employee of the highest repute.

It is absolutely understandable that the Applicant became deflated in the aftermath of the expulsion of this student. There is no doubt that the Applicant was experiencing stress and anxiety as a result of this event but there is no evidence before the Tribunal that the stress being experienced was anything other than an occupational stress. There is no medical evidence to support the contention that the Applicant did not realise the import of his decision to proffer a protest resignation when he did so.

That said, the reaction of both the headmaster and the Board of Management did fall well short of what might reasonably have been expected in all the circumstances. The headmaster sought an oral clarification in a corridor scene that does not appear to have been to the credit of either party, whilst the Board of Management described the resignation as "disproportionate".

The Tribunal notes that no real attempt was made by either the Headmaster or the Board of Management to seriously ask the Applicant to re-consider the choice made by the Applicant. Whilst the Tribunal accepts that the Applicant was not sick, could this decision to resign be considered rash?

In his letter of the 19th of May, the Headmaster does revise the employer position somewhat when he states that he will not act on the resignation until the 1st of June and he also invites the Applicant to consider taking a leave of absence. The Tribunal believes this is a significant turning point in the relations between the parties. Here is an offer of leave of absence which might have been the antidote required by the Applicant to free himself of the strenuous year he had just been through. The Applicant would not have been under any obligation to return to the workplace, but would have retained the security of a good job had that been his choice.

In any event, the Applicant did not take up the offer of leave of absence and crucially allowed the 1st of June to come and go without any intimation that he wanted to change his mind on the resignation.

The Tribunal does not attach any weight to the process of looking for a replacement member of staff. Any school serving the needs of six hundred pupils must be adequately staffed. There was a period up to the 1st of June where any process could have been stopped. Thereafter the time for being allowed to try and reverse the

decision is ever diminishing as the process of finding a replacement is underway. By the time an approach was made in July, a replacement had been found.

The Tribunal accepts the resignation once made cannot be withdrawn without the acquiescence of the employer. In this instance the employer had allowed for a period of reconsidering up to the 1st of June. Thereafter the resignation was bound to come into effect from the 31st of August (as per letter of resignation).

The Tribunal has every sympathy for the Applicant whom, as previously stated, it found to be credible and forthright but this does not alter the position that the Applicant sought to change his mind long after the opportunity to do so had passed.

In all the circumstances, the Tribunal finds that the Applicant's claim under the Unfair Dismissals Acts, 1977 to 2001, must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

