

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

CASE NO.

UD844/2007

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr. D. Winston
Mr G. Whyte

heard this claim at Dublin on 28th February 2008 and 26th May 2008.

Representation:

Claimant: Mr. Thomas Casey, LK Shields, Solicitors, 39/40 Upper Mount Street, Dublin 2

Respondent: Mr. Oisín Quinn B.L. instructed by Arthur Cox, Earlsfort Centre, Earlsfort Terrace, Dublin 2.

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant gave evidence of commencing employment on the 20th February 2006. She was employed as a Greeting Cards & Gift Co-Ordinator. There were a lot of different aspects to her job. She worked independently with some assistance. She had responsibility for stocktaking, organising catalogues, populating the company's website, dealing with Geneva. She liaised with the website designer and reported to her line manager.

In July/ August of 2006 difficulties arose between herself and two work colleagues. These were fairly petty difficulties, but she found their behaviour was unpleasant. She felt excluded.

On the 21st September 2006 the claimant had a conversation with a colleague concerning coverage of the Greeting Cards & Gifts campaign on the website. The campaign ran from September to December. She felt a banner advertisement should be placed at the top of the website. The coverage

mentioned for the website was one week only and the claimant felt this was insufficient. Funding was forthcoming from Geneva. Following this discussion she contacted her line manager and requested a meeting.

On the 22nd September 2006 the claimant was called into a meeting with her line manager and the Executive Director of the company. The claimant outlined how she felt undermined and excluded at work. The Executive Director informed her that two employees had complained about her aggressive behaviour. It was suggested that the claimant had delegated work. The claimant disagreed. It was also suggested that she influenced the Accountant about taking a day off. Four to five days after that meeting the claimant had a positive discussion with the Executive Director. She asked the Executive Director if she should put something in writing about her difficulties to her and she was advised to do so.

A further meeting took place on the 5th October 2006 at the Executive Director's request. The Executive Director said that the claimant had escalated matters as a result of an email she had sent to her and the company was now appointing an independent external person to investigate matters. The claimant asked if she withdrew her complaints would it make any difference. She was told the investigation would go ahead anyway. She did not want to escalate matters and did not want to make an official complaint. When the investigation concluded it did not uphold any allegations made by the claimant.

The claimant then gave evidence of working through lunch, working late in the evenings and working on Saturdays. Working through lunch was done to facilitate customers. There had been a reversal of a decline in sales. Sales in 2004 had been under €300,000, sales in 2005 had been €282,275 and sales for 2006 were €313,542. It was hoped that sales in 2007 would be even better. Her supervisor had acknowledged that sales had increased.

On the 28th February 2007 the claimant received an email from the Executive Director complaining that she was late for work on three occasions that week. She responded to the email apologising for being late stating and that she would make an effort to be at her desk on time. She was given a copy of disciplinary procedures at that stage.

The claimant attended a meeting on the 22nd March 2007 with her line manager and the outgoing Executive Director. Possible disciplinary outcomes were discussed at that meeting and various allegations were put to her about being late. She explained her reasons for being late and her contact with the incoming Executive Director. She felt the meeting did not establish anything and the tone from the company was very aggressive. She felt it was better if she was not around anymore. On the 27th March 2007 the claimant received a letter to her home address about the meeting from the outgoing Executive Director. The letter stated that the company had concerns.

On the 5th April 2007 the claimant received an email from the new Executive Director accusing her of being in her office and using her phone. She admitted to making a phone call in her office and apologised for having done so and said she would not do so again. She said that it had been commonplace to use the office in the past and people would often make a phone call from the office.

On the 28th May 2007 the claimant received an email from the new Executive Director requesting her attendance at a meeting the following morning. She did not go to that meeting and decided that she had no future with the company and resolved to leave. She sent a text message to say that she could not attend the meeting.

She sent a letter to the new Executive Director and her line manager on the 13th June 2007 giving notice that she was resigning with immediate effect. She received a response to this letter from the new Executive Director on the 19th June 2007 thanking her and wishing her well in the future.

Under cross-examination the claimant re-iterated that there never was a problem with staff using the Executive Officer's office to make calls. She explained that people wandered in and out of the office. Regarding the changing of her password on the computer, she explained that it was an oversight on her part that she never left the new password on a post-it on her computer. However, she said she could have been contacted by telephone. Regarding the investigation carried out, the claimant felt that the other two parties had put a slant on it. She accepted the investigator's findings. She contended that the escalation of the complaints against her were out of all proportion.

She explained that there did not appear to be any monitoring of time-keeping in the downstairs office. Her contract of employment stipulated that time off in lieu would be given for additional hours worked. She said that she had been late for work on some occasions by five to ten minutes but the time she worked through lunch and in the evenings made up for this. She did not abuse time-keeping. She worked extra hours to make up for the times she was late.

Regarding the claimant's 2006 bonus, she indicated that she was pleasantly surprised to receive the bonus and did not expect it. However, the claimant said that she received a lesser pay rise than others in the company.

The claimant explained that the main reason she e-mailed the incoming Executive Director was because she wanted to know if there was a future for her in the company. She was anxious to have the one-to-one meeting with the Executive Director.

After the claimant attended a meeting in Geneva in late April 2007 she typed up notes on the details discussed. As a courtesy to staff she furnished each of them with a report of the meeting. Some were appreciative. She had no reason to think of this as an issue with the company.

The claimant felt she was shown the incorrect agenda for the forthcoming PSD meeting. In the first draft agenda cards and gifts were an item but on the second agenda they were omitted. She did not complain to the company at the time.

The claimant resigned from the company on 13th June 2007 because she was suffering from high levels of stress. The respondent paid her to 12th July 2007. The claimant expected her salary on leaving the company would be in the region of €40,000. She commenced a new job shortly after leaving the respondent company.

Respondent's Case:

The Deputy Director gave evidence. She joined the respondent company in 1997. The respondent has twelve employees including an Executive Director, Deputy Director, an Accountant and a Communications Manager. The claimant reported directly to her. The colleague whom the claimant replaced had trained her on the job and advised her of the importance of time-keeping. In March 2006 the claimant stated that if she knew time keeping was going to be so important she would not have taken the job. In the claimant's initial five to six months of work she displayed confidence and capability. As the company became busy from September onwards the claimant displayed that she was on top of her job.

At the claimant's review meeting which took place before the claimant's probationary period had expired time-keeping had been mentioned but was not a huge issue.

The allegations formally made by the claimant in respect of two colleagues were taken very seriously. She met with the claimant on 27th September 2006 to discuss the claimant's difficulties with two members of staff. The claimant outlined that she felt undermined and excluded. The claimant furnished a HSA document on bullying. The Deputy Director spoke to the Executive Director and decided the matter needed to be investigated. An independent person conducted the investigation. The investigator's findings were that he did not uphold any of the allegations.

The Deputy Director spoke of time-keeping. Those staff in attendance as early as 8.30 am or 8.40 am chose to be there at those times. There was no pressure on anyone to start work before 9.00 am. The rule for all staff was that they be available and at work at 9 o'clock.

The claimant's e-mail to the incoming Executive Director while the latter still worked at a different organisation was viewed as quite serious and unacceptable.

At the end of April 2007 the claimant travelled to Geneva. On 3 May 2007 the Deputy Director received a phone call from a member of staff who had received a copy of the claimant's report of the meeting in Geneva. It was not necessary that each staff member receive a copy. The Deputy Director said she should have seen the report before it was circulated to the staff. She believed what was discussed in Geneva was untrue. Retention rates for the greeting cards operation were discussed as being much higher. She took exception to this and found it very demotivating for staff. Both the Deputy Director and the Executive Director spoke separately to the Director of Sales and Marketing about this issue to clarify matters for staff. There was no criticism of the claimant's report from Geneva and the claimant acknowledged this.

Regarding the PSD visit, draft agendas circulated in advance of the visit included cards and gifts as an agenda item but more urgent pressing issues took precedence over the greetings cards on the final agenda.

Under cross-examination the Deputy Director contended that the allegations against the claimant needed to be investigated for the claimant's sake. Once she became aware, and being an officer in the company, she thought it best that it must be investigated. She felt it appropriate that the decision to investigate should be conducted by an external person.

The Deputy Director told the Tribunal that staff are required to work from 9 am to 5.30 pm each day. Over the Christmas period the office is closed and to make up for extras hours worked by staff during the course of the year four to five days are given to each staff member at this time. These days are not taken from the staffs' own annual leave entitlement.

The Executive Director gave evidence. She was appointed to this position on 4th April 2007. On her first day she met all the staff and explained that she intended meeting them on a one-to-one basis. These meetings lasted four to five hours. Up to 28th May 2007 she had met five staff members but not the claimant. She had been incredibly busy and found it difficult to find a date convenient to both herself and the claimant. She offered to meet the claimant on 17th April 2007 but the claimant declined that offer. The claimant was away in Geneva for the following eight days. Subsequently, the Executive Director was ill for a week and then the following week she travelled to Hong Kong. She assured the claimant that she was aware the one-to-one meeting was

outstanding and offered to meet with her on her return to the office. She tried to facilitate the claimant on 18th May 2007 prior to the claimant's holidays. She eventually arranged to meet the claimant on 29th May 2007 but the claimant phoned in sick that day.

Under cross-examination the Executive Director explained that she had reviewed the claimant's personnel file as she had done with all other employees before meeting them.

Determination:

The Tribunal having carefully considered all the evidence does not believe that the treatment of the claimant, while in some ways deficient, particularly in the immediate aftermath of the problem first arising, amounted to mistreatment, which would justify her decision to resign from her position. Incidentally, the claimant failed to demonstrate that she had suffered any loss. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)