

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD715/2007

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath

Members: Mr M. Noone
Mr B. Byrne

heard this claim at Wicklow on 2nd April and at Arklow on 27th May 2008

Representation:

Claimant : Ms Pauline Codd B L instructed by
Tarrant & Tarrant, Solicitors, Law Chambers, Arklow, Co Wicklow

Respondent: Mr Niall Beirne B L instructed by
Rory P. Benville & Co., Solicitors, "Riverview House", Seapoint Road,
Bray, Co. Wicklow

The determination of the Tribunal was as follows:

Claimant's Case

A former sales and marketing manager with the respondent commented adversely on the management style of the former hotel's general manager who was also one of its three directors. She described his input as extremely unprofessional and added that he was a complete and utter bully to both management and staff. All staff were in fear of their jobs as a result of his behaviour towards them. That director was not a person one approached over a work grievance. This witness was not issued with a contract of employment and resigned from that employment in late 2005 without instigating any claims against the respondent.

According to the witness the claimant had an excellent working relationship with that director. She observed the claimant on several occasions between May 2004 and December 2005 working late into the night and early morning and on duty again for breakfast some hours later. The witness was in no doubt that the claimant's weekly working hours far exceeded fifty-five.

A former restaurant supervisor who worked there in a permanent capacity from April 2005 to February 2007 and still undertakes work at the hotel from time to time said that the working

relationship between the claimant and the general manager was very friendly prior to the commencement of the claimant's maternity leave in March 2006. However, the witness noticed a changed atmosphere between them when she returned in September that year. The claimant soon complained of long working hours.

The claimant commenced employment with the respondent in the spring of 2004. Her title was food services manager and as part of the management team she did not formally record her starting and finishing time at work. She described her working hours as relaxed and quoted the general manager as telling her that he needs her at the hotel whenever the hotel needs are to be met. In order to put some structure on staff and management working times and arrangements the claimant started to devise a work roster. Over time the witness felt she was reporting for work earlier and leaving later as departing staff were not replaced. She worked up to sixty hours per week and explained that on the grounds of loyalty, commitment, and affection towards the job and the respondent. The claimant managed to have Mondays and Tuesdays off each week at that time.

Prior to returning to the hotel in the autumn of 2006 when her maternity leave ended the claimant met the general manager and told him that she was unable to work those previous long hours. She offered to resign her employment if reduced hours were not forthcoming. The respondent agreed to that and when the witness returned in September she also recommenced doing the work rosters. Upon her return the claimant felt she "was no longer in the gang" and that the previous "buddy-buddy" relationship with her employer was gone. She cited several incidents where the general manager undermined her work and overplayed his role.

These included forcing her to work late when there was no reason he could not have covered for her. She described the general manager's attitude in this case as cruel and callous. On another occasion he again made the claimant and other staff to re-open the bar after official hours "to facilitate his drinking". As a result of another incident the claimant felt "like a peanut" due to his behaviour towards her and residents who were socialising in the hotel bar. That undermining continued in relation to a proposed wage increase to a long-employee and an alleged assault by him on a staff member. In another incident the witness told the general manager that the staff were in fear of their safety due to the aggressive behaviour of a particular customer who threw a bar stool in her direction. The respondent did not act to protect its employees.

These experiences of the general manager's "two faces side" since her return from maternity leave made her fearful of him and she soon regarded him as a bully. As a result of an incident in March 2007 over staffing for breakfast the general manager expressed his anger by taking over substantial control of the work rosters. He called the claimant into his office and told her that her hours no longer suited him. He told her that "anyone who doesn't like it (i.e. the roster change) knows where the door is" and indicated to the claimant that she could no longer be guaranteed Mondays and Tuesdays off. This was "the cracking point" for the claimant, as she wanted structure on her hours and certainly not an increase in them not least because of her domestic situation. The general manager said that the rosters would be issued with a month's notice but the reality was different as they only appeared with three days notice.

Apart from the general manager there were two other directors with the respondent. Those directors were less involved in the business and the general manager also declared himself as the operational director and indicated that all work issues were to be brought to him. In that respect the claimant felt restricted in where she could bring a grievance to and certainly thought there was no point in bringing grievances to the general manager whose behaviour was the source of her complaints. She had never been given a contract of employment and there was no bullying policy or grievance

procedure in place.

In April 2007 the claimant was diagnosed by a doctor as suffering from very high anxiety levels. She said her ill health was caused by the working conditions and bullying at work and felt she had no other option but to resign from the respondent. She returned to work a couple of weeks after attending her doctor but continued to feel she “was living on a knife edge with the general manager”. Following discussions with her husband the claimant submitted a letter of resignation dated 1 May 2007 to the general manager. She indicated that the recent changes in her rostered hours and the consequential deterioration in her health as reasons for her resignation.

The general manager and a financial director formally responded to her resignation. The former expressed sadness and the latter surprise and shock. The claimant did not respond to the financial director. However, she accepted that she never made that director or the owner of the hotel aware of her complaints against the general manager. Even though she had respect and trust in those other directors the claimant believed that bringing her grievances to them was futile as she had no confidence that such a move would address her concerns. Besides she had little or minimal contact with them over the course of her employment there. She also believed that the general manager was capable of talking himself out of trouble and would continue to run the hotel as he saw fit. The claimant’s lack of approach to those two directors was partly due to desire to decrease her work pressure, as she feared the general manager would make life harder for her had she contacted those directors.

Respondent’s Case

The financial director only became aware of the claimant’s cessation of employment subsequent to its occurrence. He was not made aware of her complaints against the general manager prior to her proceedings against the respondent. However, in the course of an exit interview with a departing employee in December 2005 he was informed of the general manager’s modus operandi. As a result of that the witness cautioned him. The witness felt that this departing employee was prone to exaggeration and wanted to damage the general manager’s character and he did not give her complaints much credence. Besides the general manager denied any bullying on his part.

The financial director said that he received no complaints at any stage from the claimant about the way she was treated by that manager. On the contrary he thought her relationship with that manager was very good. As stated in his letter to her in May 2007 had she approached him or the other director the matter would have been taken very seriously with the aim of resolving the situation. The witness added that this general manager’s employment with the respondent was terminated in April 2008.

Following the claimant’s solicitor’s letter of 1 August 2007 the witness approached the general manager who described her allegations as trumped up charges with a view to securing monetary compensation. Despite another warning issuing to the general manager in December 2007 the respondent gave him responsibility to run the respondent’s case up to April 2008. The witness conceded that the respondent did not have either a grievance or bullying procedure in place during the course of the claimant’s employment.

The owner of the hotel who described himself as an investor did not take an active role in the affairs of the respondent. He accepted the general manager’s opinion that there was no merit in her case against the respondent. While he was aware of the reported case of a previous employee the witness had no knowledge that the former general manager was a bully and tyrant. Had the

claimant made her complaints known to him at the relevant time then the respondent would not have tolerated such a situation. While he accepted some of the claimant's evidence he felt her stress was not solely attributable to her work situation.

Determination

The Tribunal has carefully considered the evidence adduced in the course of this difficult two-day case. At the outset the Tribunal finds the applicant's evidence to have been absolutely credible. There is no doubt that the applicant was subjected to an unacceptable level of bullying and harassment from the general manager. There is no doubt that the bullying commenced directly after her period of maternity leave concluded and therefore all the more invidious as it can be seen as targeting a new mother. Additionally, it is noted that before going on maternity leave the applicant had enjoyed a good rapport and professional relationship with the general manager, which had been unique in its closeness. This made the change in attitude towards her all the harder for the applicant to take.

The applicant had returned from her maternity leave in September 2006. In her evidence, the applicant stated to the Tribunal that the following six months period had been difficult with the general manager but not unworkable. A series of unsavoury incidents did occur such as when the general manager refused to release her when her child was being brought to hospital. However, the real tension arose when there was a dramatic change in the rostering of management, which left the applicant working hours which were untenable to her. Within about three to four weeks the applicant had gone out on sick leave. It is accepted that the rostering was unsuitable to the applicant but the Tribunal cannot find that they were implemented to solely discommode the applicant.

It is clear at the time of her departure that the applicant genuinely believed that the general manager had it in for her and that his bullying together with impossible working hours meant she could not be expected to return to the workplace. The question, which the Tribunal must address, is whether the decision not to return was reasonable in the circumstances? The respondent has urged that it was open to the applicant as a reasonably clued in manager to take any complaints she may have had to either of the other two directors to whom the general manager was answerable and to have initiated a grievance type procedure even where one was not explicitly part of company policy

Much significance was placed on the exit interview conducted by the financial director and a previous employee. The interview, which basically amounted to a personal attack on the general manager, was the first inkling that the other two directors had that there might be a problem with their general manager. The Tribunal has no reason to disbelieve that the financial director addressed the issue with the general manager and cautioned him with a written notice on his file. It is accepted that there was probably not much more that could be done at that time where the general manager denied the claim and the employee had voluntarily left her employment and had only made the complaint post handing in her notice.

The applicant states that the any complaint she might have made would have been futile. The applicant urges the Tribunal to accept that the two directors are vicariously liable for the general

manager's behaviour. Subsequent to that employee's complaint, ideally the other directors should have acted more quickly in implementing a grievance procedure in the workplace. Regardless of how they now felt about their general manager, they certainly knew that there was no formal grievance procedure in place. It is noted that at the time of this previous complaint the applicant and the general manager were still enjoying an excellent working relationship and a full eighteen months passed before the applicant in turn resigned.

The evidence has demonstrated that in the course of that eighteen-month period there was nothing to suggest to the two other directors that the general manager was continuing to act in such a way that reflected badly on both themselves and their hotel. They appeared to be in the dark. In particular, the applicant who had by now come within the firing line of the general manager's bullying ways was not inclined to say anytime.

The two directors in their evidence were emphatic that had they been approached they would have thoroughly investigated the complaint of bullying. The applicant says she believes they would have been ultimately supportive of the general manager. The Tribunal cannot test this either way. The only question the Tribunal can ask was whether it was reasonable that she did not alert the other two directors of her difficulties. The Tribunal finds it was not.

In being a bully and a chauvinist the general manager was acting well outside his employment remit. The other two directors cannot be liable to stand over behaviour of which they were ignorant. The applicant accepted both these directors were approachable and there is nothing to suggest she would not have been believed or at least supported in the course of an investigation.

The Tribunal does not, however, find that the other two directors were not without fault and the generally laissez-faire attitude of the hotel was apparent in their evidence. It is unacceptable that a defined grievance, and anti-bullying procedures and contracts of employment were not in place in this workplace and to this extent the applicant must succeed in her action.

The claim under the Unfair Dismissals Acts, 1977 to 2001 is allowed and the claimant is awarded €12,000.00 as compensation under those Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

