

EMPLOYMENT APPEALS TRIBUNAL

Claim of: Case No.
Employee UD1294/2006
against
Employer
under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin
Members: Mr. D. Hegarty
Mr. K. O'Connor

heard this claim at Cork on 24th October 2007 and 31st January 2008

Representation:

Claimant: Ms. Philomena Murnane B.L. instructed by Ms. Amy Shine,
Bill Holohan & Associates, Solicitors, Water View House,
16 Sundays Well Road, Cork

Respondent: Mr. Tom Mallon B.L. instructed by Mr. Cian Beecher,
Arthur Cox, Solicitors, Earlsfort Centre, Earlsfort Terrace, Dublin 2

The determination of the Tribunal was as follows:

The fact of dismissal was in dispute in this case

Claimant's Case:

The claimant commenced employment as Marketing Manager with the respondent in January 2004. The claimant was based in Cork. There were two marketing managers including the claimant and at first her role was unclear but later became more focused. The claimant was given responsibility for a product and her focus was to promote the product in the Middle East and Asia. The claimant received excellent performance reviews.

During 2004 the claimant's manager changed and Ms. E, Vice President of Marketing, became the claimant's manager. Ms. E was based in Seattle and the claimant reported to Ms. E. Ms. E completed the claimant's performance review for 2005.

The claimant was also to liaise with Mr. H, Vice President of Sales, who was based in the UK. The claimant telephoned Mr. H and the sales team on a weekly basis. The claimant also met with Mr. H once a month in the UK. Ms. E expressed a concern to the claimant that Mr. H was difficult to work with but the claimant embraced the challenge.

The first few months working with Mr. H were fine but Mr. H started to criticise the claimant's work and he became aggressive. Mr. H did not read information the claimant sent to him and he then asked her questions in front of the sales team as if he had not received any information from the claimant. He did not reply to the claimant's e-mails or telephone calls.

The claimant attended a telecommunications sales tradeshow in February 2006. It was the first year the show was held in Barcelona. The claimant was involved in organising the company's stand at the show and deciding what products should be displayed. Mr. H and the sales team were also involved in the tradeshow.

The claimant booked a number of rooms in a hotel located a few minutes outside of Barcelona and she also managed to book three rooms in a hotel outside of the exhibition centre. Mr. H wanted to stay with his team at the hotel outside of Barcelona even though the claimant offered him a room at the closer hotel. The claimant organised the exhibition space and told Mr. H in advance where the stand would be located and what products would be displayed. In Barcelona Mr. H criticised and complained about what the claimant had organised for the tradeshow.

During the tradeshow in Barcelona the claimant organised a meal in a restaurant that had been recommended to her. The claimant later heard through a third party that Mr. H had initially been disgusted by the restaurant but ended up actually liking the restaurant. On another occasion in a restaurant Mr. H made a remark to the claimant and she shouted back at him as she was upset.

Mr. H was to organise a meeting with wireless operatives from Europe at the show. The claimant had to organise the conference room for the meeting but Mr. H was to organise the meeting itself. Mr. H subjected the claimant to intimidating behaviour and questioned her about the set-up for the meeting.

The claimant had a good working relationship with Ms. E. On return from the tradeshow the claimant told Ms. E about Mr. H. Ms. E spoke to Mr. H with the result that Mr. H apologised to the claimant stating that he should not have shouted at her. Mr. H's behaviour improved for a month.

However, Mr. H and his team continued to question everything the claimant did. The claimant double-checked all information before sending it to Mr. H but she always received questions about the way she had done her work.

The claimant told Ms. E that she was stressed about her work situation and something needed to be done. Ms. E suggested life coaching to the claimant. The claimant asked Ms. E why she was suggesting life coaching, as she was not the problem. The claimant told Ms. E that she would prefer Human Resources to be involved instead.

Ms. E suggested the claimant make contact with Human Resources in the UK, as that was where Mr. H was located. When the claimant spoke to Ms. N the HR Manager for Europe, Middle East and Africa she was told that Mr. H was considered a really nice person. The claimant said he was not a nice person to her and relayed her experiences at the tradeshow in Barcelona.

The claimant was provided with two options. Option one was a confrontation between the claimant and Mr. H. Option two was HR would speak to Mr. H. The claimant said she did not think this would be of any benefit but she said she would think about this option.

The claimant felt that she had no other choice but to resign. The claimant did not avail of the options offered by Human Resources in the UK as she felt her confidence had been eroded and she was not prepared to allow Mr. H to do this any further in another meeting.

The claimant wrote resignation letter dated 21 April 2006 but stayed working with the company for a period of time, as she did not want to cause hassle to Ms. E and the marketing team. The claimant tendered her resignation to Mr. K in the Human resources office in Ireland. Mr. K expressed surprise that the claimant had spoken to HR in the UK rather than in Ireland.

During her period of notice the claimant attended an event on the 15 May 2006 in Nice. Mr. H was also present at this event but there was no interaction or communication between them.

The claimant stated that during her employment Mr. H made her feel stupid and useless. The claimant was not given respect from Mr. H or the sales team.

The claimant met with the HR Manager for Cork/Galway for an exit meeting. The claimant stated her reason for leaving was Mr. H and that she had not been offered a proper solution about the matter. The claimant made it clear that she was unhappy with how the incident was handled.

The claimant gave evidence of her loss.

During cross-examination the claimant accepted that the two options that had been offered to her were a formal option and an informal option. It was put to the claimant that she had declined to operate the company's grievance procedure. The claimant stated that she felt the options provided to her were unsuitable. In hindsight the claimant regrets not speaking with HR in Ireland about the matter.

The claimant confirmed that she had continued in her employment for seven weeks after she had tendered her resignation. The claimant accepted that HR in Ireland had offered that she could retract her resignation but the claimant did not know what HR in the UK or Ireland could do to change things.

Answering questions from the Tribunal the claimant stated that her role was to deliver marketing support to the sales team. Although Mr. H was more senior in the company than the claimant she was not directly under his chain of command.

Respondent's case:

The Tribunal heard evidence from Ms. E, the Vice President of Marketing. The claimant reported directly to her and once every week they had a meeting to discuss business and there was also an opportunity to discuss personal matters. The claimant contacted her in relation to the tradeshow in Barcelona and that there had been an incident in the restaurant with Mr. H, Vice President of sales. The claimant did not like the exchange with Mr. H. They discussed some options and the claimant requested her to speak to Mr. H, which she did and witness believed that after that he behaved in a way acceptable to the claimant. Ms. E received confirmation of this by e-mail from the claimant. There was another event where Mr. H suggested he would bring his secretary who would organise

the hotels however the claimant felt it was inappropriate as this was her job. After this witness suggested to claimant that it might now be appropriate to have HR become more formally involved. Witness then contacted Ms. N on 21st April 2006 asking for her assistance and immediately after this the claimant tendered her resignation. She was surprised and saddened to receive her resignation as she had always given her three options: to sit down and work it out, to go through the formal grievance procedure or witness had offered to help the claimant as a mentor. She told the claimant there was a process but it would have to be fair to both sides. The period of the claimant's notice was extended during which time she went to a conference in Nice.

In cross-examination witness said that Mr. H was demanding but got results. The reason she suggested that Ms. N was the person to become involved was that she was the senior HR person. Around the time of the claimant's resignation it was not suggested that she take time off but if she had asked the time would be given to her.

The Tribunal also heard evidence from Ms. N, the HR manager for Europe, Middle East and Africa. She had dealings with Mr. H and she was aware of previous incidents. The previous witness had asked her to become involved which she did. She e-mailed the claimant and had a forty-five minute telephone conversation with her on Friday 21st April 2006. They discussed the Barcelona trade show/restaurant and the upcoming Nice conference. She did not recall if personal issues were discussed. Witness believed they could work it out and she offered her three options: (1) She could speak to Mr. H on her behalf, (2) informal discussion to talk openly and (3) go through the formal grievance procedure. During the telephone conversation the claimant did not accept or reject either of the proposals. In relation to Mr. H witness said he would have to be made aware and he would have to be given a chance to give his side of the story. The claimant listened and they agreed she would think about the options over the weekend. Within a half hour of that telephone call the claimant had resigned. Witness was surprised as she was expecting to hear back from the claimant on the Monday and she would decide which of the three options she had chosen. If the claimant had rejected all three options the respondent would still have investigated but it would have been unfair not to have Mr. H involved. She was not aware of any problems in the claimant's personal life.

In cross-examination witness said she was not aware that the claimant had applied for unpaid leave.

The final witness was the HR manager for Galway and Cork and she reported to the previous witness. She was aware of the Barcelona incident as she was in Seattle when the claimant rang Ms. E about it. The claimant never mentioned the matter to her even though they worked in the same office. If the claimant wanted to raise it she was contactable and they had a friendly working relationship. After the claimant resigned the e-mail was forwarded to her on Monday 24th am. She rang the claimant as she wanted to meet her face to face and the claimant came to her office. Witness explained her surprise and she spoke to her regarding the three options given and her response was that Mr. H would be given the opportunity to defend himself and that the matter would have to be investigated. Witness felt that the claimant understood and offered to let her (the witness) sort things out as she felt that she was rushing in without exploring the options. The claimant still wanted to resign. Witness believed that she offered the claimant the chance to retract her resignation. About an hour after their conversation at 13.54 on 24th April 2006, she sent the claimant an e-mail stating that she could still help her and stated that if she changed her mind to let her know. At 14.02 the claimant replied to the e-mail stating she was happy with her decision to leave. A couple of days later they had a discussion about her leaving date and as the claimant stated she was going on holidays in June, witness told her she could work until the June weekend. The claimant continued to work until the 8th June 2006 and during this time she did not make any

attempt to say she had changed her mind. In relation to unpaid leave, the claimant did not make any such request to witness and she was not aware of events in her personal life other than she was building a house. She met the claimant regularly in the canteen and helped her with her CV and she stated that she was going to take things easy and look for other work in September.

Determination:

While the respondent could have handled the matter more effectively the claimant did not reach the standard of proof required for constructive dismissal. Her claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)