

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD1147/2006

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal

(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr. J. Redmond

Dr. A. Clune

heard this claim at Ennis on 12th May 2008

Representation:

Claimant: Mr. Justin McCarthy, MacCarthy & Associates, Solicitors,
10 Upper Mount Street, Dublin 2

Respondent: XXXX

The case before the Tribunal is one of constructive dismissal.

The representative for the Claimant opening: the Claimant made a complaint against two employees (D and S) who were her line manger and a more senior line manager. The Respondent appointed an independent investigator (H). The representative explained that part of the Claimant's case is that the Respondent, by far exceeded the scope (remit) of the investigation. Reference to Book C page sixteen indent 2:

The Claimant met N on four occasions between November and December 2005 and became more hostile as the meetings progressed. The first meeting was on 01st November, the second and third on 14th and 17th November, the last on 07th December.

The Claimant withdrew from the meetings/ process on 07th December. The Claimant perceived masked hostility and N suggested that she resign. The investigation turned into a disciplinary process against the Claimant.

The representative for the Respondent opening: the investigator was an independent investigator appointed by the Respondent. The investigation could uncover matters and that the investigator could make recommendations. It would be for the chief executive to accept the recommendations

or not.

The Claimant was legally represented at the meetings. Copies of the report were sent to the parties and D and S replied to the report. There was no response from the Claimant or her representative.

The Claimant had made enquiries and retiring early on the grounds of ill health and this was before she instigated her complaints; the Claimant had planned to retire on grounds of ill health.

Claimant's case:

The Tribunal heard evidence from the Claimant: she commenced with the Respondent in 1971 and moved to Ennis in 1974. She worked in the disability services area. She attained a grade six level and Ms D recommended that she be promoted to acting grade seven.

Her line manager was Ms D and Mr N was Ms D's line manager i.e. senior to both the Claimant and Ms D. For three days of the week the Claimant worked in her substantive role and reported to Ms D. For two days of the week she worked on a project and reported to Mr N. She was happy in her position and did not complain nor was she the subject of a complaint.

Towards the end of 2004 issues arose between herself and Ms D. She went to Mr N and stated her case. A mediator (O'D) was appointed and he met Ms D and the Claimant on 11th January 2005. The Claimant then met O'D in a hotel. He asked her if she was familiar with the rules mediation and she told him that she was not so he handed her a document to read. She thought that he was to resolve the issue regarding her transfer application as she wanted a transfer out of the work area as the relationship between herself and Ms D was not good. O'D phoned her at a later time to tell her that he would recommend to Mr N that she be allowed a transfer.

In the meanwhile or after O'D had phoned her Ms D had a meeting with the staff. The Claimant was not present at the meeting. Ms D outlined to the staff the difficulties that she had had with the Claimant in the previous few months and that she was upset and that the Claimant wanted her job. She told the staff that the Claimant was transferred.

The Claimant told the Tribunal that the disclosure of the mediation was wrong and a breach of confidentiality. Also in saying that she was transferred it would seem as if she was guilty of a misdemeanour.

She spoke to N about the breach of confidentiality and initially he denied it happened. Eventually he agreed that it had taken place and told her that he would deal with the matter. In March she spoke with N and her solicitor was present and she requested of N a letter to be given to staff to explain that she was not guilty of a misdemeanour and he agreed to this. The letter was never sent.

She felt isolated and that everyone presumed she was (guilty of a misdemeanour). She felt isolated as no one invited her for a coffee or contacted her by phone. She had returned to work on the basis of the letter (would be sent to staff) in April

Regarding a complaint that the Claimant made later on in the year:

The Claimant gave evidence as to how she made a complaint and that an independent investigator (H) was appointed. H increased his remit. H suggested to her that she resign. He had been appointed to investigate and no more than that. The first meeting she met him and they discussed her project. He told her that the Respondent would never admit that bullying happened and that there were no witnesses and she agreed.

The second meeting he showed her a document that she had not seen before even though she had requested it. He then asked whom she would like him to interview on her behalf and she gave him a list of names. He asked her questions: If she had left stock in uninsured stores and she told him that she had not.

At the third meeting he showed her a letter of complaint and she had not seen the letter before. At the conclusion of the meeting her representative was not present, as she had to leave early. He then said to her what would she do if he found against her. She told him that it was not for her (that it was not a investigation or disciplinary procedure for her) that it was either true or not (that her accusations were upheld or upset).

At the last meeting which was also at the hotel H got aggressive and accusatory. He threw his hands up and threatened to leave the process. He told her that everyone he interviewed spoke against her; no one spoke for her. He told her that it was he who was conducting the interview and not her. She asked for a break and went to get some hotel headed paper. She wrote down her withdrawal from the process. He asked her to stay and if she stayed with the process he would tell her whom he had interviewed. She explained to the Tribunal that she had given him a list of seven witnesses. He told her that if she withdrew it could go against her anyway.

H had asked her numerous times about retirement plans. H was aware that she had sent in an application to retire. He asked her why she withdrew her retirement application and she told him that she had wanted to complete / partake in the process.

The Claimant was asked about the letter dated 28th December 2005 from H that was opened to the Tribunal. Her interpretation of the letter was that H suggested that she retire and if she did not a process that she made a malicious allegation would ensue.

(The Claimant also explained that H was appointed as an independent investigator and he referred to N by his first name and therefore knew him)

H had a remit to make recommendations and she believed that he should have recommended that she be transferred and at a grade seven.

In May she took ill and went on sick leave. She had taken a panic attack in work and had to go home. She had been told that he would not send the letter. She was on leave and got a letter from N that said her entitlements had decreased as she had too much leave taken; this turned out to be incorrect.

The Tribunal heard evidence from the Respondent;

The Tribunal heard closing statements.

Determination

The Tribunal finds that the inclusion in the investigation of other issues such as whether the claimant used or ought reasonably to have used a more appropriate way of resolving her difficulties in the report display a bias which the Tribunal believes led to imparting and abandonment of fair procedures to the detriment of the claimant.

The claimant had indicated that she intended to resign and the alternative by the respondent may be a formal investigation into the claimant's behaviour. Taking everything into account the

tribunal awards the claimant compensation in the amount of €80,000 under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)