

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD206/2008

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr. M. Kennedy
Ms. E. Brezina

heard this claim at Dublin on 16th June 2008

Representation:

Claimant: Jones Magee & Company, Solicitors, 1 Eglinton Road, Bray, Co. Wicklow

Respondent: Ms. Sinead Mullins, IR/HR Executive, IBEC, Confederation House,
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

Claimant's case:

The claimant gave evidence that she worked on the coffee machines for the company in the XXXX plant in Cherrywood. As part of her duties she had to lift ten litre cartons of milk, and as a result of this she hurt her back in December 2004. She became unable to lift the cartons of milk anymore, but the company did nothing for her. She got colleagues to help her. She also worked on the tills. A year later she got a pain in her back pushing trolleys and told her manager about this. She made a personal injury claim about this second incident. After this she was put on the tills. Then the bullying started and the company did nothing about it. She complained several times, over a two year period, but nothing was done. She couldn't handle it anymore, so she left on 21 December 2007. She hasn't worked since, but has applied for many jobs.

She had enjoyed working for the company and didn't want to leave. She said that she was unaware of the company's bullying and harassment policy. She agreed that she had signed off on the bullying and harassment policy, but it had not been discussed with her. She was not aware of any

grievance procedure, but had simply raised the bullying issue with the company and made a complaint to the Business Manager (CK). On 28 August 2007 she attended a meeting with CK, and explained that she had a row with another member of staff (AD), who she said had shouted at, and bullied her. In her letter of resignation of 21 December 2007, she did not state the reason for leaving because the company already knew why. She admitted that CK had asked her could the situation be resolved, but she did not accept that he had asked her did she want to change her mind about leaving.

Respondent's case:

The Business Manager (CK) gave evidence that he worked with the company for eight years. He said that the claimant never raised the bullying issue with him. She was aware of the procedure and had received training on it. In regard to the row with AD, he said that the claimant was told by AD not to leave her station without permission, and that an argument ensued. He had meetings with both of them and told them to come to him if they had any problems, and not to air their differences in public. Originally, the claimant had told him that her reason for leaving was because she wanted a change, and to pursue further education. He asked her for a written letter of resignation, which she provided on 17 December 2007. There was nothing about bullying in this letter. He gave her the opportunity to change her mind about the resignation, and to use the grievance procedure, but she refused, so he left it that and wished her well. He was not aware of the claimant's allegations against AD until the exit interview with her on 21 December 2007. The claimant had been a good worker for the company. He said that if any member of staff wished to complain, they would first go to their line manager, who in the claimant's case was himself.

(Case quoted by representative for the respondent: Conway v Ulster Bank ud474.81)

Determination:

The claim here is a claim under the Unfair Dismissals Acts, 1977 to 2001, for constructive dismissal. It appears to the Tribunal that there is quite a conflict of evidence between the witnesses.

It is the unanimous view of the Tribunal that no dismissal occurred in this instance, and accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

