

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

Against

Employer

under

CASE NO.

UD65/08

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Mahon B.L.

Members: Mr J. Horan
Ms. P. Ni Sheaghda

heard this claim at Naas on 13th May 2008 and 29th July 2008.

Representation:

Claimant : Mr. Andrew Cody, Reidy Stafford, Solicitors, Newbridge, Co. Kildare

Respondent: Mr. Ronan Martin B.L. instructed by Mr Brian Hutchinson, O'Sullivan & Hutchinson, Solicitors, Main Street, Portarlinton, County Laois

The determination of the Tribunal was as follows:-

Preliminary Issue:

Counsel for the respondent contended that the claimant did not have one year's service and that her contract of employment commenced on 16th October 2006 and ended on 12th October 2007. He stated that the claimant was unwell in July 2007 and submitted a certificate for the days 9th, 10th and 11th July 2007 only and did not return to work. The respondent had difficulty contacting her in her absence despite numerous telephone calls to her. In the absence of any further medical certificates and the failure of the respondent to contact her, the decision was taken to suspend her on 2nd August 2007 and her contract of employment was not renewed.

The Tribunal then heard evidence from the claimant that she commenced work for an animal foundation in Kildare in June/July 2006. After approximately three/four months and on the advice of the owner of that business she became a participant on a community employment scheme but continued to work in the same place and do the same work. The sponsor of that scheme was the respondent. After an absence from work on sick leave from early July 2007 she was certified fit to

resume work on 29th August 2007 but was not permitted to resume work. She understood her contract of employment would be renewed in mid October 2007. She received her P45 in late October 2007.

The Tribunal having heard evidence from both parties decided that jurisdiction did exist and therefore proceeded to hear the merits of the claim under the Unfair Dismissals Acts, 1977 to 2001.

Claimant's Case:

The claimant commenced employment with an animal foundation in June/July 2006. She worked 5/6 days a week. Her duties included feeding, exercising and caring for the animals. After approximately three/four months the owner of that company recommended that she should participate in a community employment scheme. She became a participant on that scheme on 16th October 2006 with a contract of employment. The sponsor of that scheme was the respondent. The claimant continued to work in the same place and do the same work as she had previously.

The claimant was employed on a two and half-day week but worked overtime which brought her working week to 6 days. She also attended classes to further her education.

In July 2007 the claimant became ill. She hand delivered a medical certificate to her supervisor. The supervisor said he had a few issues to discuss with her and she tried to explain the cause of her illness. A heated discussion then ensued and the claimant said that her supervisor sexually harassed her and passed a lurid comment towards her. She told him he was not getting away with it. She had never been absent from work up to this time.

The claimant continued to furnish the respondent with medical certificates. She received a letter dated 2nd August 2007 from the respondent concerning her absence from work and suspending her from work. Several days after her suspension she telephoned her supervisor and asked him if she could see his manager. This request was refused.

The claimant told the Tribunal that a Manager of the scheme used to visit her home quite frequently and was aware of her illness.

The claimant's medical practitioner certified her fit for work in a letter dated 29th August 2007. The claimant took this letter directly to Director D. He became very abusive towards her and said she had not submitted medical certificates to the respondent. She tried to discuss the allegation with Director D but he said the allegation was serious and that she would need a good solicitor/barrister. She then went to the office and spoke to her supervisor. The conversation became heated. The supervisor telephoned her medical practitioner. The claimant was in tears. She had no contact from the respondent from then until she received her P45 at the end of October 2007.

Under cross-examination the claimant contended that she sent in all her medical certificates and insisted that the respondent should have received them.

The claimant told the Tribunal that she telephoned her supervisor a day or two after she received her letter of suspension and he never mentioned the issue of the non-receipt of medical certificates. She also said that six medical certificates in total had been sent to the respondent. The claimant said she loved her job and was eager to further her education.

The claimant established loss for the Tribunal.

Respondent's Case:

The designated supervisor of the community employment scheme gave evidence. He was an employee of the respondent. Eighteen staff worked there. He was responsible for the day to day running of the project. Staff were paid on a weekly basis.

The supervisor confirmed that the certificate covering the claimant's absences for 9, 10 and 11 July was handed to him. Regarding the certificate/letter dated 18th July 2007, he said that this was sent to another project supervisor. The only medical certificates received by the respondent were those dated 12th July, 18th July and 29th August 2007.

The supervisor made several telephone calls to the claimant but failed to make contact. The three staff in the office also had difficulty contacting the claimant. He believed the claimant's contract could have been renewed for the following year. He felt she did her job well. After the claimant's letter of suspension he had no further involvement in the matter. It was in the hands of the Directors.

The supervisor refuted the sexual harassment allegations made against him by the claimant. He said they were untrue.

Under cross-examination the supervisor said that the claimant had direct contact with only two of the three directors. He was responsible for human resources initially but at the end of the day it was invested solely in the Directors. He said that the scheme was grant-aided by a state agency.

The supervisor said that Director G carried out the investigation into the allegation of sexual harassment. He was unaware of the conclusion of that investigation. There had never been any problems before in the company.

The supervisor told the Tribunal that the reason the contract was not renewed was because the claimant had failed to contact the office during most of her absence from work and he did not know if she was available for work. He never thought to ask the claimant's sister, who worked in the company, how the claimant was during her absence from the office.

Director G gave evidence. Regarding the letter of 18th July 2007 indicating that the claimant had been subjected to sexual harassment, she said no serious investigation took place into the matter. The supervisor had brought the matter to her attention. She was in and out of the office quite frequently and the claimant had ample opportunities to speak to her. She believed the claimant to be a very articulate person and if the claimant had any issue she could have discussed it with her. She said she had helped the claimant financially and had encouraged her to go back to further her education. She did not speak to the claimant subsequent to the claimant's letter of suspension.

Under cross-examination Director G was unaware of grievance and bullying procedures. The respondent had a Health and Safety statement. The respondent did not have a grievance policy. If anyone in the company had a problem they would discuss it with her.

Director G said she could not take seriously the allegation of sexual harassment stated in the

letter/medical certificate of 18th July 2007 from the claimant's medical practitioner. She was aware the claimant was fit and well and had been out and about the area. She could not interview the claimant following the allegation because she could not contact her. She did not enquire from the claimant's son who worked in the company as to how his mother was in her absence from work.

Following the letter of 29th August 2007 from the claimant's medical practitioner she spoke to Director D and they decided to engage professional advice, as they were unsure as to how to handle the situation. She never thought there was an ounce of truth in the allegation.

Director D gave evidence. The claimant called to his private house with the letter dated 29th August 2007 certifying her fit to return to work and he asked her to leave and to go the office and have the matters dealt with there.

Under cross-examination Director D said he did not know if the company had grievance and disciplinary procedures in place. He said he did not recall seeing the letter of 29th August 2007, addressed to him nor could he recall seeing a letter dated 13th September 2007 from the claimant's solicitors.

The Tribunal was then told by the supervisor that the claimant handed the letter of 29th August 2007 to him but he told the claimant that he was busy and that as it was not addressed to him she should discuss it with Director D. He told her that the matter was out of his hands.

Determination:

The Tribunal carefully considered the evidence adduced, statements made and documents submitted during the two-day hearing. Members of the Tribunal particularly noted a lack of application of fair procedures and also the fact that a serious allegation raised by the claimant was not formally investigated. The Tribunal finds that the respondent suspended the claimant on 2nd August 2007 and subsequently dismissed her without recourse to any disciplinary or dismissal procedures. Therefore, having regard to all the circumstances, it is the unanimous determination of the Tribunal that the claimant was unfairly dismissed, the effective date being 29th August 2007. The Tribunal allows the claim under the Unfair Dismissals Acts 1977 to 2001 and awards the claimant €12,192.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

