EMPLOYMENT APPEALS TRIBUNAL

CLAIMSOF: CASE NO.
Employee UD855/2007

WT292/2007

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. P. McGrath BL

Members: Mr. L. Tobin
Mr. C. Ryan

heard these claims in Dublin on 30 June and 1 July 2008

Representation:

Claimant:
Mr. John Connellan, Carley & Co., Solicitors, 10 Anglesea Street, Dublin 2

Respondent :
Ms. Sheila Treacy, IBEC, Confederation House, 84-86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

The Tribunal has carefully considered the extensive evidence put to the Tribunal in the course of this two-day hearing. An initial difficulty arose between the Applicant and the line manager as far back as 2005. This situation was resolved by way of a three-way meeting between the HR manager, the manager and the Applicant. From the employer's point of view it was presumed that the differences were reconciled and normality resumed in the workplace.

Then in September 2006 the Applicant again approached HR management with a series of grievances and complaints about the working environment. It is clear that a meeting set up was cancelled and the Tribunal has no reason to doubt that the Applicant was wary of another three-way meeting. Nothing in particular turns on this. What is important is that at a second meeting between the Applicant and the HR

manager an allegation of bullying is made. A request was made to put this allegation in writing which was not done. There can be no doubt that this was a serious allegation and should have been followed up by the HR management. It is noted that the HR manager had a conversation with the line manager that an allegation had been made but this conversation does not appear to have formed part of any grievance process.

Suffice to say that the onus was put on the Applicant to formalise her complaint and this she never did. The Tribunal finds this failure on the Applicant's part cannot solely be the responsibility of the employer. The Applicant is an intelligent senior employee who could have followed up her initial complaint either with a written notice or an oral request to intervene on her behalf.

Equally the Tribunal finds that the HR manager failed to follow up the initial oral complaint and that the state of flux in the workplace is not a good enough excuse to have allowed the Applicant's complaint fall through the cracks.

Nonetheless, another 6 to 8 month period, including a period of sick leave, passes before the Applicant hands in a letter of resignation. A new HR manager is on board at this time and she takes very seriously the content of the letter of resignation and launches an immediate investigation into the complaints made.

There can be no doubt that the extensive and thorough investigation conducted by AG (the last of the HR managers involved) revealed a long history of difficulty and strain between the Applicant and her line manager. The findings of the HR manager were to uphold the grievance made by the Applicant and, while there was no finding of malice, it is accepted that the Applicant had good cause to feel bullied, harassed and victimised by her line manager.

As is appropriate in cases such as these, the line manager faced a full disciplinary process on foot of the findings of the investigation. The outcome of this was not specifically made known to the Applicant.

The law, in cases of constructive dismissal, is that the Applicant must demonstrate that the employer's conduct was such that the Applicant felt she had no alternative other than to resign her position. Was such a decision reasonable in all the circumstances?

The Tribunal finds that the employer did all it could in the aftermath of receiving the letter of resignation. A full investigation was conducted and an invitation to return to the workplace was extended. In addition, it is noted that the employer was open to meeting requests and provisions which may reasonably attach to the said return to work.

In addition, an offer was made to bring in a mediator to facilitate a harmonious return to the workplace if that was possible.

Ultimately, the applicant declined the offer of return stating that her relationship with her line manager had deteriorated too much.

It is regrettable that this final step was not taken and the Tribunal finds it was unreasonable for the Applicant not to have seen this process through. The Employment Appeals Tribunal's primary function is to ensure that internal workplace procedures are fairly applied to individual employees and there is an onus on employees to engage fully in these procedures where a clear effort is being made to overcome past difficulties.

Despite the foregoing, the Tribunal finds that there was fault on the part of the employer insofar as there was inordinate delay on the part of the employer in addressing the issues and, in particular, in failing to meet the September 2006 complaints and the Tribunal finds that there was sufficient evidence of a very bad working atmosphere in the physio department for up to 24 months prior to the Applicant's departure.

On those limited grounds, the Applicant's claim under the Unfair Dismissals Acts, 1977 to 2001, succeeds and the Tribunal awards her the sum of €3,500.00 (three thousand five hundred euro) under the said legislation.

As the Tribunal did not find the respondent to be in breach of the Organisation of Working Time Act, 1997, the claim under that statute is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)