

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

UD352/2008

against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. P. McGrath B.L.

Members: Mr. M. Flood  
Mr. C. Ryan

heard this appeal at Dublin on 17 July  
and 30 October 2008

#### **Representation:**

Claimant:

Ms. Emma Barry B.L. instructed by Mr. Paul Connolly,  
Delahunty O'Connor & Co. Solicitors,  
2 Bangor Drive, Dublin 12

Respondent:

Mr. Brendan Kirwan B.L. instructed by Ms. Deirdre Lynch,  
Matheson Ormsby Prentice Solicitors,  
70 Sir John Rogerson's Quay, Dublin 2

The evidence:

This being a claim of constructive dismissal it fell to the claimant to make his case.

The claimant was employed as a management trainee from 28 June 2006 in the respondent's vehicle rental business. He worked in the respondent's largest branch (LB) and the employment was uneventful until the appointment of a new acting branch manager (ABM) in the summer of 2007. The respondent operates a mentoring scheme for management trainees and the claimant's mentor was the corporate sales manager (CSM). The claimant and CSM got to know each other through a division of the respondent that reported to CSM being located at the site of LB where the claimant worked.

Some time in late July or early August 2007 the claimant and CSM had a lunch meeting to discuss strategies to enhance the claimant's promotional prospects. It is common case that at this meeting

the claimant raised issues with how the appointment of ABM might affect his promotional prospects. The respondent's position is that at this meeting the claimant did not complain about ABM's conduct towards him but rather sought guidance on how to handle the situation. The claimant's position is that at this meeting he complained to CSM about ABM's attitude and conduct towards him. The claimant felt himself to be at a disadvantage vis a vis the respondent's grievance policy in that ABM was not only his direct report but also the next rung on the ladder as area manager.

On 1 October 2006 the claimant, who was on his lunch break, was telephoned by ABM who shouted at him to demand his return to the branch immediately. The claimant completed his lunch break and when he returned to LB complained of being laughed at by a colleague and of feeling belittled. The claimant handed in a medical certificate and told ABM that he would not be returning to work until he had spoken to the managing director (MD) who was on leave that day. On 2 October 2007 the claimant spoke to MD in a telephone conversation in which the claimant told MD that he did not want to either work or have any contact with ABM as he was extremely stressed and was not getting an adequate work/life balance. As an interim measure MD offered the claimant the opportunity to work in a different branch not under ABM's control. On 3 October 2007 ABM texted the claimant, who was out sick, to request his attendance at an area meeting. On 4 October 2007 ABM telephoned the claimant seeking billing details that he had already given to a colleague. The claimant's position is that at this point both CSM and MD had failed to prevent him being bullied further. He therefore telephoned the city manager (CM) to inform CM of his decision to resign from his position.

Following MD's return to work on 8 October 2007 an investigative meeting to discuss the claimant's grievance was held on 10 October 2007 and was attended by the claimant, the financial controller (FC) who is second in command to MD and MD's personal assistant (PA) who at the time was acting human resource officer. During the course of this meeting the claimant tendered his resignation in written form giving one week's notice from 4 October 2007 to leave the employment on 11 October 2007. While the resignation was accepted FC endeavoured to persevere with the grievance procedure, with the agreement of the claimant, but in the event the claimant did not pursue this.

### **Determination:**

The Tribunal has carefully considered the evidence adduced in the course of this two-day hearing. The burden of proof rests with the claimant to establish that he acted reasonably in resigning his position as the prevailing circumstances in the workplace were such that the claimant could not reasonably be expected continue in his employment.

The evidence of all the parties was that the claimant had been an exemplary employee who had come to the attention of management for showing drive and dedication in the workplace. A year into his employment the claimant came under the management of ABM. There is no doubt that the claimant and ABM did not see eye to eye and it is accepted that she might have had unrealistic expectations of what she could demand of the claimant. More importantly ABM's manner was heavy handed and demanding, making the workplace less desirable for the claimant. It was contended by the claimant that he made complaint to CSM, with whom he had a good rapport. However the Tribunal interpret this conversation as having been more in the nature of seeking advice rather than in raising a formal complaint. CSM was a friend and not a line manager. This conversation, which seems to have taken place in late July or early August 2007, was largely related to the claimant's promotion prospects.

On 1 October 2007 ABM telephoned the claimant during his lunch break and made unreasonable demands in an inappropriate manner. The respondent does not deny that this incident occurred. The claimant then spoke with MD who arranged for the claimant to work at another branch on an interim basis. The Tribunal would be critical of this move on the part of the respondent as the solution being imposed was on the bullied party (the claimant) and not the person perpetrating same. However it is noted that at least some active measure was taken however unsatisfactory. It is also accepted that MD spoke with ABM and warned her that any contact should be professional pending an investigation. A question arose as to whether any contact should be made at all but it seems that either way ABM did call the claimant on or about 4 October 2007 looking for some work related information. The claimant was upset at this communication and handed in his resignation.

The question, which the Tribunal must answer, was whether this resignation amounted to a constructive dismissal in all the circumstances. In answering this question the Tribunal must consider the reasonableness of the parties and the alternative actions open to the claimant. The Tribunal absolutely accepts that the claimant felt persecuted by ABM and that she was solely responsible for putting the claimant in the frame of mind wherein he felt his only option was to resign. He felt, it seems, unprotected by senior management who had not forbidden ABM from communicating with him. At a meeting organised on 10 October 2007 the claimant confirmed his decision to resign. This appears to have been the first time that MD was aware that a resignation had been tendered.

The Tribunal accepts that the management were anxious to resolve this issue and requested that the claimant partake in a grievance procedure. Given that the claimant had already resigned his position the only possible reason that management requested the formal initiation of this process was to genuinely investigate the actions of ABM with a view to determining whether disciplinary action might be required. The Tribunal accepts the merit of this intention.

Having taken all these factors into consideration the Tribunal finds that the claimant believed he had to resign his position. However although he may have been constructively dismissed the claimant did not establish that his actions were wholly reasonable and that there were no alternatives open to him. To this extent the claimant's own action contributed to his decision to terminate his employment. The Tribunal finds in favour of the claimant and awards €5,000-00 under the Unfair Dismissals Acts, 1977 to 2001

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)