

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD946/2007

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 24th September 2008

Representation:

Claimant : Ms Mary-Paula Guinness instructed by
O'Mara Geraghty McCourt, Solicitors, 51 Northumberland Road, Dublin 4

Respondent : Mr Tiernan Lowey B L instructed by
Michael Houlihan & Partners, Solicitors, 9-11 Bindon Steeet, Ennis, Co. Clare

The determination of the Tribunal was as follows:

The respondent raised a preliminary issue at the outset of this hearing in relation to the claimant's length of service with the respondent. It was their contention that the Tribunal did not have jurisdiction to hear this case as the claimant had less than the twelve months service normally required to bring a claim before the Tribunal. In addition the respondent maintained that the period one-month referred to a lunar month as distinct to a calendar month in this case. The respondent maintained that the claimant's departure from the company was by way of a resignation.

The claimant's signed T1A form received by the secretariat on 15 October 2007 stated that her date of termination of employment with the respondent was 9 August 2007.

While it was common case that the claimant's date of commencement was 8 August 2006 the representative for the claimant argued that due to the unusual circumstances of this case her actual date of cessation was as stated on her T1a form. It was the claimant's belief that the respondent had dismissed her.

The evidence adduced on this point from both parties inevitably merged into the substantive case. Notwithstanding that dismissal was in dispute in this case the respondent was directed to adduce their evidence first in view of the fact the company initially raised the preliminary issue.

Respondent's Case

On 29 June 2007 the chief executive officer became aware that the claimant had submitted her immediate resignation to a colleague. He was so concerned at this news that later that day the witness together with the construction operations' director met the claimant to address her situation. Since a sudden resignation was a rare event at the respondent's the chief executive officer wanted to explore the reasons for such a development. During the course of a "rambling" conversation from the claimant the witness heard for the first time her accounts of being bullied in the workplace by a named project manager. He was not aware of any previous grievance submitted by the claimant and understood from her that the bullying issue had been resolved.

The witness indicated that the meeting was conducted in a sympathetic way towards the claimant. Hypothetical issues were put to her about her work situation and it was agreed they would speak again about this situation the following Monday. References were made to reviewing her situation over the weekend. The witness, however, did not tell her that her resignation was not accepted. He suggested that she confused the issue of sympathy and review with a rejection of her resignation. A further brief telephone conversation took place between them that Monday and concluded that they talk again the following Thursday 5 July.

In the meantime the witness asked human resources to investigate the claimant's allegations and that investigation found no substance to them. Based on their advice he distanced himself from further involvement in this case. He did acknowledge receiving an email from her on 6 July where she expressed appreciation for his input into her case. That email also informed him that she was withdrawing her letter of resignation and acting on his suggestion to take time off to think things through.

The human resources manager referred to the claimant's contract of employment and her receipt of the company's bullying and harassment policy. That signed contract stated among other things that one month's notice must be given from either party in the event of a termination of employment. The witness accepted that had the claimant complained of bullying to a supervisor then the informal procedure would have been initially invoked. The witness first learned of these allegations on Sunday 1 July when the commercial director and the claimant's supervisor informed him of this. He was on leave the previous Friday when the claimant raised that matter at a meeting.

Prior to 5 July the witness "looked at" the claimant's situation but did not contact her about the bullying allegations. He described her case as clean cut. He then wrote to her that day stating that the respondent accepted her resignation and forwarded her a P45 and a cheque for outstanding leave and salary up to 29 June 2007. Subsequent to the writing of that letter the witness received an email dated 6 July and forwarded by the chief executive officer and originally sent by the claimant. Based on the contents of that email the witness phoned the claimant and reaffirmed the company's decision to accept her resignation. He outlined the contents of the 5 July letter to her. While voicing her surprise at this news the claimant did not refer to her understanding of developments that transpired at the meeting with the chief executive officer and the other manager on 29 June.

In response the human resource manager received an email from the claimant expressing her shock and dismay at his announcement on her resignation. She had been under the impression that the respondent and in particular its chief executive officer were dealing with her case. The correspondence continued in the form of a letter and email to the claimant on 9 July repeating that the respondent was accepting her resignation submitted on 29 June. That letter also contained a further cheque to cover a month's salary in lieu of notice. The witness called that cheque a goodwill

gesture.

In his brief evidence the commercial director and immediate supervisor of the claimant referred to an incident in February 2007 when the claimant complained of the way another colleague was treating her.

Claimant's Case

Prior to commencing employment with the respondent in August 2006 the claimant worked as an assistant quantity surveyor with another company for four years. At her commencement she was assigned to work with a senior quantity surveyor. She also had direct links to other staff members including the commercial director, a project manager, and the contract director. She understood that the person in overall charge of the respondent was its chief executive officer.

By the autumn of 2006 and during the following winter the claimant felt she was at the receiving end of the project manager's wrath. She soon realised he had an aggressive manner in his dealings with her. In February 2007 she briefed the commercial manager who she considered to be her boss about that objectionable behaviour. She told him that the project manager was generally abusive towards her and that this abuse took the form of shouting and belittling her. Her boss indicated he would act on this complaint but he never contacted her again about her complaints. As time passed "things got worse at the sites" as the project manager continued his abusive and bullying ways with her. That aggressive behaviour extended to threatening and screaming at her. As a result of that treatment the claimant was medically declared unfit for work for a week in late March due to an infection. By that time her boss and a contract director knew of her upset.

The abuse continued into spring 2007 with the project manager verbally abusing, physically threatening, and bullying the claimant. She was also subjected to a humiliating experience in the office of the financial controller. On 29 June 2007 the claimant handed a note of resignation to her supervisor and commercial director. She stated her decision was taken on advice from her doctor. Later that day she met the chief executive officer and the construction operations director to discuss her decision. She denied her conversation at that meeting was rambling. The witness told them of her bullying experiences. The chief executive officer appeared sympathetic towards her and said he was not accepting her resignation. He advised her to take some time off and added that there is nothing that cannot be rewritten. Her clear impression at the conclusion of that meeting was she had choices to make on her future with the respondent. They agreed to talk again the following Monday. Following their short telephone conversation that day she understood that the chief executive officer would contact her on Thursday 5 July.

The claimant was absent on sick leave due to work related stress from 2 to 30 July 2007. On Friday 6 July she emailed the chief executive officer thanking him for his intervention and adding that she was formally withdrawing her resignation. Some time later that evening the human resources manager phoned her to tell her that her resignation was being accepted. He commented that this was best for everyone. She was shocked at this news. The claimant still felt she was employed by the respondent due to her ongoing contact with the chief executive officer. She sent a lengthy email later that evening to the human resource manager and the chief executive officer explaining her situation. The claimant never returned to work following her departure from the premises on 29 June 2007. She continued to submit medical certificates up to the end of September 2007. A letter from the human resource manager to her dated 31 August stated, among other things, that all outstanding financial entitlements to finalise her situation were presented to her on 9 July. The respondent insisted her employment terminated on 29 June.

Determination

This unusual case had several strands to it not least the length of service of the claimant and the circumstances of her cessation of employment with the respondent. In the course of the hearing the Tribunal determined that it had jurisdiction to hear the case, as it was not convinced by the respondent's preliminary evidence that she had less than the required time to bring a case against it under the legislation.

There was an absence of clarity from both sides in this case. It is clear that the claimant attempted to resign her position and made efforts to withdraw it some time later. From the evidence it is not clear how the respondent actually dealt with this situation. Mixed messages, however unintended, were conveyed to the claimant as to her status, if any, with the company from 29 June onwards. Overall management and responsibility lies in this case with the chief executive officer, as his management team are answerable to him. The claimant felt that her ongoing relationship with him kept her employment intact, especially when it was indicated to her in whatever terms that her employment status within the company was still a live issue.

In view of this the Tribunal finds that the respondent's letter of 9 July 2007 amounted to a letter of dismissal. That letter contained a notice payment of one month. There were no grounds for that dismissal other than the letter writer's belief that she had resigned on 29 June. That resignation had, however, either been withdrawn by the claimant or not accepted by the chief executive officer by that date.

The Tribunal awards the claimant €22,500.00 as compensation under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

