

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD827/2007

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 22nd September 2008

Representation:

Claimant : Cashin & Associates, Solicitors, 3 Francis Street, Ennis, Co. Clare

Respondent : Mr Duncan Inverarity, BCM Hanby Wallace, Solicitors,
88 Harcourt Street, Dublin 2

The determination of the Tribunal was as follows:

Claimant's Case

Prior to commencing fulltime employment in a sales assistant position at the respondent's Ennis branch in February 1997 the claimant worked part time with the respondent in that branch from the summer of 1992. He was also working on the family farm during this time. Apart from his letter of appointment containing his conditions of employment the claimant stated he did not receive any other documentation from the respondent. However, he was aware of a staff handbook but never saw or read one. In the course of his work the witness became involved in trade union activities and at one stage was a staff representative. In that capacity he learned of the grievance, disciplinary and complaints procedure.

Up to April 2004 the claimant enjoyed a good working relationship with the respondent. His annual assessment forms also indicated that the respondent had a positive image of him. That situation changed when the claimant was asked to change from his stock room duties to the checkout area following his return from sick leave. He protested at that change but was faced with a "take it or leave it" attitude. He subsequently undertook those duties and that "didn't work out". The claimant submitted medical certificates in May 2004, which declared his illness to be stress related. He resigned from the respondent that summer.

A short time later the respondent contacted him and following a meeting the claimant returned to work on the understanding he would not work on the checkouts. Due to alleged harassment from the management the claimant again resigned his position within a few weeks. The respondent again contacted him in the person of the store manager and following a meeting between them the claimant agreed to return to work. Following that development the claimant got married and the store manager was replaced. The witness still felt uneasy with the respondent when he returned. He stated that he never operated the cash registers again from 2004 up to the cessation of his employment in March 2007.

In May and December 2006 the claimant was subjected to reprimands from the respondent. He was issued with a first written verbal warning for his objection in carrying out a stocking task and the December incident concerned the claimant's refusal to undertake cash register and hygiene duties. The witness regarded these episodes as evidence of further victimisation. He accepted that he never raised any harassment or victimisation issues with the respondent at any time nor referred to his agreement with a former manger that he was not to perform cash register duties.

By February 2007 the claimant decided to resign his position again and accordingly handed in a short note giving notice of that intention. That note was preceded by another reprimand from the respondent over his attendance record. He felt his reasons were not relevant to that decision and neither aired or raised them in any way with the respondent. He said he was under pressure at the time and added that the respondent did not offer him a part-time position following his resignation.

Respondent's Case

A former human resource manager at the Ennis store said it was the store manager's policy to move staff around different sectors, as he wanted them to be multi-functional to meet the needs of their customers. Those sectors included the checkout areas. The claimant was not told he would not be exempt from that area but the witness accepted he had a difficulty in working there.

That store manager said it was imperative that all staff understood that their services had to extend to a number of functions that included the use of cash registers. He referred to an extract from a staff handbook that stated among other things that sales assistants are transferable to all areas within the store. He was certain that the claimant worked sporadically in that area from 2004 to 2007. Neither he nor a former store manager brought the claimant's objections to his attention. The claimant never raised any issues of harassment or victimisation with the witness.

A human resource person maintained that a copy of the staff handbook was given to the claimant. In addition the complaints procedure was displayed on the staff notice board. The claimant never formally complained on any aspect of his work. The witness was not aware of any agreement between the claimant and a former store manager about the checkout area. She saw the witness on the checkouts from time to time from 2004 to 2007. The claimant never mentioned his objection to cash register work when she met him during the course of an investigation meeting in December 2006.

When the witness sought an explanation from the claimant for his resignation he replied that it was due to pressure from working at home on the farm. He declined her offer of part-time employment and never mentioned he had been subjected to intimidation or harassment at work.

Determination

In order to involuntarily resign from employment an employee must show that their action was reasonable considering all the circumstances. Based on the evidence in this case the claimant not only did not exhaust a grievance or complaints procedure he did not even begin to use one. Even if he was unaware of one he had enough experience and knowledge to seek it out and utilise it. This was not done. The respondent was not given the opportunity to properly address the claimant's concerns, as he had not aired them in a constructive and formal manner.

The claim under the Unfair Dismissals Acts, 1973 to 2001 falls.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

