

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD819/2007

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Fahy BL

Members: Mr. J. Redmond
Dr. A. Clune

heard this claim at Galway on 26th August and 10th November 2008

Representation:

Claimant : Mr Pat Flannery, SIPTU, Forster Court, Galway

Respondent : Purdy Legal, Solicitors, New Docks, Lough Atalia, Galway

The determination of the Tribunal was as follows:

Claimant's Case

The claimant described herself as a support chef while an employee of the respondent. Her duties included assisting in all areas of the kitchen and inputting into the preparation of breakfast, lunch and evening meals. Her immediate supervisor was a head chef but according to the witness that person only acted in deference to and compliance with the catering manager. The claimant was also acquainted with the general manager. She commenced that work in September 2005 and for the first year there had a good relationship with the respondent.

That situation deteriorated in October 2006 when the claimant found herself in conflict with the management over her absences from work and the subsequent fallout to those absences. The claimant's daughter was waiting six months for surgery when she was informed on 18 October that this surgery was scheduled in five days time. She gained the impression from the respondent that an agency worker would undertake her tasks for a week commencing 23 October. The claimant took that day off and got permission to take the following day off to attend to her daughter's welfare. While at work on 25 October the claimant learned that her presence was needed in the hospital for the discharge of her daughter. When she approached the catering manager seeking time off she got a near hostile and indifferent response. Not for the first time did she feel badly treated by that manager.

Around noon that day the claimant phoned the general manager and complained about the way she was treated by the catering manager and added she would not be returning to work that day. She phoned him again in late afternoon and left a message saying she would be at work the next day. The claimant had already the following days off and reported for work again on 31 October. She was soon summoned to a meeting with the catering and general manager. During that brief encounter the witness was criticised for her recent absences and her lack of explanation for them. The general manager made no reference to her telephone calls of the previous week. The claimant refused to sign her written warning, as she did not agree with its contents.

Apart from this incident the claimant stated that the catering manager went out of her way in making life difficult for her. She alleged that her breaks were generally short and late, that her positioning and status in the kitchen left her isolated and that the catering manager was also watching her "ready to pounce". That scenario upset her so much that she sought medical assistance. The claimant was declared unfit for work from the end of November to early February 2007. A series of correspondence between the claimant and the respondent was submitted in evidence for that period. Among them was an appeal letter from the claimant against her written warning and a request that an informal procedure be activated to deal with her alleged bullying. The human resources administrator invited her to meet to discuss those allegations. In a separate and later letter that same person also informed her that a further disciplinary issue had to be addressed due to her breach of sick leave policy. The witness did not follow up on the administrator's offer, as she did not know that person.

The claimant who only resided a few minutes from the respondent returned to work on 1 February, as she wanted to save her job. However, she observed no improvement in her situation. Nobody from management approached her about her situation and she still felt isolated and watched at work by the catering manager. She hoped that situation would go away but when it did not she decided to leave and gave notice of that intent on 16 March. While she was aware of the grievance procedure the claimant felt there was nobody she could trust there to address her grievances. By March 2007 her appeal against her written warning succeeded but no further meetings took place as a result of her resignation.

According to a former colleague of the claimant the treatment of staff depended on who they were and which group they belonged to. He stated that the respondent, particularly the kitchen management, subjected the claimant and himself to the worst treatment. That showed itself in the amount and timing of their breaks and the claimant was always "put in a corner" in the kitchen.

Respondent's Case

First to give evidence on behalf of the respondent was the Hotel Service and Accommodation Manager (CB), whose responsibilities include overseeing the restaurant, patient care, accommodation and conference facilities.

The claimant was part of the kitchen team, she believed she had a good relationship with the claimant, and had the same rapport with her as with the rest of her team. The claimant had never come to her and told her that she was bullying her.

On October 25th 2006 the claimant had commenced work at 10.00am and had approached her at 10.20am informing her that her daughter was being released from hospital and that she needed to

go to collect her. She asked the claimant if her partner could collect her daughter or if she could make alternative arrangements. As this was not possible, she told her she could go and the claimant said she would return in about two to three hours. The claimant did not return to work that day.

The claimant returned to work on 1st November but did not report back directly to her as was required after an absence from work. She along with the general manager met with the claimant and explained to her that an employee was obliged to report to a manager on their return to work.

The first time she had heard that the claimant was alleging her of bullying was when the sick cert was sent to HR stating that the claimant was out of work because of stress from bullying. The HR manager contacted the claimant to arrange a meeting with her, as they were anxious to find out why the claimant thought that she had singled her out and was bullying her.

The claimant had said in her evidence that this witness was standing over her and constantly watching her, she explained that she had fifty seven staff in total so would not have the time to stand over an employee to ensure they were doing their job. The atmosphere in the kitchen was calm, it was an extremely competent area, and a credit to their head chef and the rapport was good among the team.

She explained there were a number of different shifts and sections in the kitchen all of which are of equal importance. The claimant had said previously in evidence that she had been put in the corner chopping tomatoes which she was normally not part of her duties. The witness had revisited the rosters since the first day of the hearing and it appeared that the claimant had been on salad prep for five shifts between October and March. The head chef is in charge of rostering the kitchen staff. She refuted that she was bullying the claimant by directing the head chef.

Under cross-examination she reiterated that the first time she heard of the bullying allegations was through HR on receipt of the claimant's sick cert. The general manger had spoken to her as a result of the sick cert as to the substance of it, she did not recall how many times, but they both deemed the issue very important.

She was anxious to know why the claimant was accusing her of bullying, she spoke to the head chef, HR to try and get it resolved, a meeting was set up with the claimant to discuss it, but the claimant did not attend this.

It was raised with her that the claimant had a high number of weekend shifts and work for days consecutively and the claimant had brought this to her attention. She did not recall a conversation of this nature around this time in October 2006. The claimant has mentioned it to her about a year before this and she had done an analysis of the rosters and from this it appeared that the claimant had worked less weekends than her colleagues.

Rosters for the period of October 2006 to March 2007 were introduced in to evidence. She was asked if the norm was one out of three weekends, as it would appear that the claimant worked two out of three. There was no agreement in place about having every second weekend off.

In replying to questions from the Tribunal, she confirmed that they would swap employees between sections in the kitchen, the claimant had not been asked to continuous work on preparation and stated that a qualified chef can be asked to do anything once its in their remit. The general manager had recommended that the claimant be issued with a verbal warning as a result of her failure to report to management on her return to work. She could not recall if the claimant had raised any

complaints at this meeting.

The general manager was next to give evidence, he looks after all the facilities mainly the non-medical area and the hotel services. He said he had great rapport with the claimant.

He was surprised when the claimant had rang him on the 23rd October 2006 and not her line manager. She had told him that she would not be returning to work that day or in the next, he had told her he would pass on the message to CB.

In relation to the issuing of the verbal warning, he had met with CB the following week and had enquired after the claimant. CB had told that the claimant was back but she had not reported to her as required. He arranged a meeting with the claimant and CB to hear the claimant's side as to why she had not reported to a manager on her return. He had listened to the claimant's explanation and he felt it was not acceptable so he issued her with a verbal warning. This warning was appealed and his decision was overturned, as he had not given the claimant an opportunity for representation. As a result of this he was going to re hear this and start the disciplinary procedures again.

He said the atmosphere in the kitchen was good; he would walk through at least once a day, and had good rapport with all the staff there. He felt the claimant had not used the informal procedures

Under cross-examination he was asked was it reasonable that the claimants action in October should have resulted in a verbal warning. He explained that the claimant had not adhered to company policy on her return to work. In relation to the call he had received from the claimant in October, he explained it was a quick chat she had said she was not returning to work and had a problem communicating this to CB, she had not mentioned bullying in this phone call. He had spoken to CB as a result of this call, to find an alternative way to cover claimant's shift.

He had initiated the disciplinary procedures, he had not checked with CB in relation to the claimant's rota, and it would be up to an employee to report back to a manager on their return to work. He explained that an employee could not go from sick leave to rostered days off, he had investigated this incident and the problem was with the claimant not CB.

He was surprised when HR told him about the sick cert the claimant had submitted, he made HR aware of the phone call he had with the claimant in October and after that he had no involvement in the bullying issue.

He reiterated that he was surprised by this phone call as normally any difficulties employees have can be handled by their line manager, at first he thought the claimant could not contact CB. He explained it was a very brief call and the claimant had told him she had issues with CB. He may have told CB that the claimant had said she was having problems with her during the course of this call. He did not pursue this it any further as he did not have the history.

Next to give evidence was the Head Chef. He was not aware of any conflict or bullying within his kitchen. He refuted that he had bullied the claimant. He was responsible for rostering his kitchen staff and the claimant had not received less favourable rosters. He explained any member of staff could be put doing vegetable preparation, he tried to ensure that all of his staff were trained in all areas and sections.

Determination

The Tribunal having heard evidence from both sides are satisfied that the claimant has not established that she made an allegation of bullying against her line manger.

The general manager's response in issuing a formal verbal warning because the claimant had not contacted her immediate line manager on her return to work was deemed to be unwarranted.

Whilst the Tribunal does accept that on the 25th October '07 the claimant contacted the general manager in relation to a leave of absence which she required from work and the general manager was made aware at that time there were issues between the claimant and her line manager, however the Tribunal does not deem these issues to be allegations of bullying.

Therefore the claimant's claim for constructive dismissal fails under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

