

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

UD411/2008

against
Employer

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr. J. O'Neill
Mr J. Maher

heard this claim at Dublin on 1st August 2008
and 14th November 2008

Representation:

Claimant(s) : In person

Respondent(s) : Ms. Deirdre Gavin, IBEC, Confederation House, 84/86 Lower Baggot Street,
Dublin 2

The determination of the Tribunal was as follows:-

Claimant's Case:

On the **first** day of the hearing the claimant gave evidence. He commenced employment on a part-time basis with the respondent in August 2006 and commenced full-time employment on February 19th 2007. He gave one months notice to the respondent and left on April 13th 2008.

The claimant read an opening statement into evidence and explained how the respondent company had changed over a period of time and now covered three areas of Dublin.

There had been some problems in 2006. The computer faced a large window and having used it for a short period of time he found that he had to close the blinds to shut out the glare. The former Manager and some volunteers complained that customers would think the office was closed. There was also inadequate lighting in the reception area. He raised the matter with his former Manager who was very annoyed and told him it was only dark, as he, the claimant, had closed the blinds. He raised the issue with the new Manager who accepted the problem and said she would deal with it. It was not dealt with.

He explained that conditions deteriorated around Christmas 2007. Problems arose about the issuing of payslips. Monthly calls had to be made to the outside agency to get the monthly payslips delivered on time for cheques to be signed off. Pay cheques were delayed frequently.

The Financial Officer did not seem to understand how to implement the company pension scheme. He spoke to the Officer about it but the Officer was unwilling to listen. However the correct deduction was agreed but it took until January 2008 to get sorted. He said that he still did not have a correct P60 for 2007. His pension contribution was not stated which left him with an incorrect addition tax liability. The Pension Broker had informed him that the respondent had not paid their pension contribution on his behalf for January and February 2008.

Payslips were often incorrect. He still did not have a correct payslip for December 2007. His payslips for January and February 2008 had an error with cumulative tax that meant that he had underpaid his tax. His P45 was also incorrect showing the wrong total pay and tax paid.

He told the Tribunal that he raised all these issues with his Manager. She told him that the method of wages was to change but he told her that that would not solve the problem of payslips. As time passed some of his duties were taken from him. The Manager told him his job-sharing partner could do it. He explained that his job-sharing partner was inexperienced. When asked, he said that he did not have a problem that someone else did the job, as long as it was done correctly.

He explained that when he was working at reception and if the Manager was in her office instead of asking staff to attend a meeting she would email them. He said that he thought this was a very strange practice as she would pass him several times a day and not mention anything. He explained that he did not check his emails regularly.

The Manager was reluctant to discuss matters with the staff. An email was issued in February 2008 informing staff that they were not allowed to be on the premises on their time off, he found the email insulting. Keys were not issued to volunteer staff and sometimes they would have to wait to gain access to the centre in the morning.

Hours of work changed from 9 am to 4 pm to 9 am to 5 pm. They were not paid for the extra hour and had to clock in and out. The centre was open to the public from 9.30 am to 4 pm. He often started at 8.55 am, took a fifteen minute paid break and stayed until the last customer left. Now they would have a one-hour paid lunchbreak.

When asked if he had invoked the grievance procedure he replied that there was no staff handbook, all they had was "custom and practice".

The claimant gave evidence of loss. He explained that he had not worked since April 2008 and was very stressed about the whole situation.

When asked what made him decide to leave he replied that it was when he received the emails in February 2008. He also stated that another member of staff bullied him. On February 22nd 2008 he told the Manager of his issues, she said that she would contact a colleague (hereafter known as GD). GD arrived at the premises and asked to see the claimant. The claimant stated that GD tried to bully him into submission and was totally unsympathetic. He was given certain assurances. He was absent on two days uncertified sick leave and contacted his Manager. He arrived to work on the Friday but the Manager was not present. He was with a client when the Manager rang him wanting to know why he had not contacted her to inform him he was returning to work that day. The claimant said it was preposterous.

He told the Tribunal that the email of March 6th 2008 was "the straw that broke the camels back". He rang GD and complained. He never received a response and gave a months notice.

On the **second** day of the hearing the claimant was cross-examined. He stated he had signed for receipt of a handbook but, as per his contract, he was not bound by it. His contract stated that

it would be subject to his agreement. When asked if he had told anyone he disagreed with the handbook, he replied no but had tried to discuss issues he had with the Manager.

Respondent's Case:

A former Chairperson of the respondent gave evidence. The claimant's Manager reported to him. He received a letter of resignation dated March 14th 2008 from the claimant. He met the claimant who informed him that he was having a change in life, there was no indication he was leaving because of any problems. He wished the claimant well. There was a problem with the claimant's last payslip, which had since been resolved.

He could not recollect the claimant coming to him with any grievances in the past but recalled having to speak to the claimant about talking about a colleague. He told the claimant that he was not to be passing comments on this person to other people. If the claimant had any problems he could speak to him, as there was no Manager at the time.

On cross-examination it was put to him that the claimant had contacted him in December concerning over ordering of booklets and the witness had stated that he was sick and tired of hearing this and that the claimant was too smart for his own good. He agreed that he had said he was tired of hearing of the over ordering.

Determination:

The claimant in this case had many concerns in his employment which individually were relatively minor for the most part. However when taken together they represented a significant problem for him. The Tribunal believed that the respondent failed to address his concerns adequately and in a timely fashion, specifically the absence of a Manager for a long period of time contributed to the problem. However, the respondent did not introduce a handbook which contained a grievance procedure. For his own reasons the claimant did not utilise the procedures. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)