

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

Employee

UD129/2008

against

Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr. P. Casey  
Mr D. McEvoy

heard this claim at Cork on 28th August 2008

Representation:

\_\_\_\_\_

Claimant :

In person

Respondent :

XXXX

The determination of the Tribunal was as follows:-

This was a claim for constructive dismissal.

**Summary of the Evidence**

It was the respondent's evidence that the claimant had worked the first year of his employment with the respondent under an assumed name but that despite this he had kept the claimant on in September 2005 because he was a good worker. The claimant denied having worked under an

assumed name. The claimant was the supervisor of the material handlers on the production floor and CX was his direct superior. Employees T and S worked in the dispatch section which was a separate area. It was the claimant's case that he left his employment because he was bullied and harassed by a number of fellow employees as well as having been racially harassed and because his employer wanted him to leave.

On 16 May 2007 there was an altercation between employee D (who worked on the production floor) and the claimant when the latter found the former helping out in the dispatch area. Employee D told the claimant that he was only helping out for a few minutes. The claimant complained to MD (the Managing Director) about employee D's aggressive behaviour towards him. The incident was investigated by CX, who took statements from all who were present at the time of the incident. Employee D was issued with a written warning.

On 28 June 2007 employee M became angry with the claimant and told him to "F... off" when he would not give him the powered pallet truck for a few seconds, to move a pallet of tools. The claimant complained to MD, who immediately went to the loading bay and having listened to both versions of the incident, issued employee M with a verbal warning for using foul language and reprimanded the claimant for not co-operating with employee M. The employee apologised to the claimant who would not accept the apology.

Employee T works in dispatch. On 23 July 2007 MD investigated the claimant's complaint relating to an incident with employee T. Employee T had been angry with the claimant because he parked his car in the area reserved for the workers in dispatch and refused to move it when asked. Employee T admitted to calling the claimant "an ignorant bastard". The claimant maintained that he was not aware that those parking spaces were reserved for the workers in dispatch. There was a conflict between the parties as to whether a number of notices to this effect were put up at strategic places on the premises. While MD spoke to employee T about his use of language to the claimant he did not issue him with a warning because he felt that employee T had been goaded by the claimant and there were plenty parking spaces available for the claimant in the goods inwards area.

Following an investigation of a complaint that employee T was stopping him from talking to employee S (in particular in relation to ordering certain items. MD did not issue a warning to T because ordering the particular items was the responsibility of another employee. On 7 September 2007 MD received a complaint from the claimant that employee S called him a "bastard" When MD interviewed employee S, he told him that he was under pressure on the day because his co-employee was absent and that he had been annoyed with the claimant because he had kept dropping pallets in the aisle and obstructing his work. Employee S immediately apologised to the claimant who accepted the apology and they both shook hands. MD believed that was the end of the matter. However, the claimant told the Tribunal that he was dissatisfied with the explanation that employee S had been under pressure.

On 19 September, CX investigated the claimant's allegation that employee P had called him "stupid". The difficulty between the two had arisen when the claimant asked employee P to pick up a piece of material, which had missed the bin and landed on the floor when employee P threw it. Employee P told CX that what he had called stupid was not the claimant but the situation, wherein the claimant had instructed him, while he was busy carrying two pallets to the machine, to pick up the material when the claimant could easily have put it in the bin himself. On CX's instruction employee P apologised to the claimant but he would not accept the apology.

On 20 September 2007, following a further incident in which employee T had said to the claimant,

"F... off, you eegit" the claimant told CX that he had enough and was leaving. CX investigated the incident and took statements from the two employees present: while employees S and T were busy preparing an order for a customer the claimant came to ask employee S about the skids even though employee S had told him the previous evening that they would be in at 9.00am; when employee T told the claimant that skids were the responsibility of another employee, the claimant had approached him in an aggressive manner but employee T did not "rise to the bait" and admitted that as he began to walk away from the claimant he said, "F... off, you eegit".

The Tribunal also heard evidence of earlier difficulties that had arisen during the claimant's employment. In summer 2006 the claimant complained that his overtime work decreased from the time MD took on some Polish workers because they were cheaper; MD on the other hand alleged that the claimant took most of the overtime himself. In September 2006 MD issued letters to the claimant and another employee for using racially insulting language to one another; it was MD's evidence that the claimant instigated this exchange and had been racially insulting the other employee over a period of time. In October 2006 MD the claimant was aggrieved when MD reprimanded him for not clocking in and out when he went for a medical appointment; because he had informed MD about the appointment the previous day. MD had issued the claimant with a job description in September 2006 when he failed to follow an instruction from his superior on the day the respondent was being audited. There had also been an issue, around the same period, about the claimant's preventing employee S from clocking out.

On 24 September 2007 the claimant attended his general practitioner and he was certified sick for one week due to depression. The claimant submitted the medical certificate to the respondent the same day. The claimant told the Tribunal that he also had some counselling.

On 26 September 2007 MD and CX met the claimant. MD refused to sign a social welfare form for injury benefit for the claimant (because he had stated in the form that he was discriminated against, victimised and bullied and felt intimidated coming to work every day) but he attached a covering letter stating that the claimant worked for the respondent and had submitted a medical certificate. The claimant's return to work was discussed. During the meeting the claimant asked MD, as he had asked over the previous months, if he wanted him to leave. On this occasion MD responded that he did; whilst he found the claimant to be a good worker he (MD) and CX were spending too much time dealing with the claimant's complaints and he could not let it continue. MD offered to keep the claimant on for three months while he sought alternative employment, give him a good reference and pay him a month's wages if he got a job. At the meeting the claimant denied that he was working, delivering pizzas.

In a letter dated 9 October 2007 the claimant made a formal written complaint alleging that he had been bullied, harassed, victimised and discriminated against by employees T and D. In the same letter the claimant referred to GM's suggestion (during their conversation on 26 September 2007) that he return to work and enquired as to what action had been taken on foot of his complaint and what procedures were in place to combat such behaviour in the future.

In compliance with the respondent's policy on bullying and harassment, MD immediately commenced an investigation into the claimant's formal complaint. Both employees were notified that a complaint had been made against them and told that a written response would be required from them when the written details were to hand. The claimant was invited to a meeting and told he could bring a colleague but he attended the meeting on his own. At a meeting with the claimant on 17 October 2007, MD gave him a letter setting out the procedures for the formal investigation of his complaint and a copy of the Bullying and Harassment Policy and

Dignity in the Workplace Policy. At this meeting the claimant indicated that he wished to include employee S in the complaint. The claimant wore his sunglasses throughout the meeting and also took a mobile call and continued to have a conversation with the caller for about five minutes. The claimant refused to take the Bullying and Harassment Policy, alleging that he had not received it before and did not see the benefit of getting it at that stage. The respondent produced a document to the Tribunal containing the signatures of the employees who had received the policy. The claimant's signature was on the document. MD informed him that it would be easier to conduct the investigation if he returned to work. On 19 October the claimant submitted his written complaint against employee S. The complaint related to the incident of 7 September 2007, which had been dealt with at the time in a manner that seemed satisfactory to the claimant; however, while on 7 September he had alleged that employee S had called him "bastard" the formal complaint stated he called him "f...ing idiotbastard".

By letter dated 22 October 2007 MD reminded the claimant of his earlier request to provide precise details of the allegations so that the investigation could proceed and gave him until 30 October to provide them. In the letter MD pointed out that whilst he (the claimant) had alleged on 7 September 2007, that employee S had called him "bastard" that this had changed, in his formal complaint of 19 October, to his having called him "F...ing idiot bastard". Further to a request from the claimant, MD furnished him with his P45 on 31 October 2007.

The claimant alleged that, because of GM's failure to give him support against the bullying, harassment and intimidation by employees and his offer to terminate his contract of employment on terms, he could not remain in the respondent's employment.

It was the claimant's evidence to the Tribunal that the details of his complaints had been furnished to the respondent at the time of events about which he was complaining.

### **Determination:**

Over the five months immediately preceding the termination of the claimant's contract of employment he had made several informal complaints to the respondent about the manner in which a number of employees had behaved towards him. The respondent dealt with the complaints expeditiously and in a satisfactory manner, issuing a warning to the subject of the complaint in some cases but not in others where he felt the claimant had either provoked or contributed to the problem. When the claimant lodged a formal complaint, the Managing Director set about investigating it in accordance with the respondent's Bullying and Harassment Policy. However, the claimant failed to respond to the Managing Director's request to provide the written details of his complaint to the respondent and resigned before the respondent could complete the formal investigation. It was only at the hearing before the Tribunal that it became clear that the claimant's formal complaint related to the incidents, which had earlier formed the basis of his informal complaints. The Tribunal finds that in the circumstances the claimant failed to afford the respondent an opportunity to deal with his formal complaint.

The claimant also relied on respondent's suggestion that he resign on terms as a ground for his claim for constructive dismissal. The uncontroverted evidence before the Tribunal is that it was the claimant who always introduced the issue as to whether the Managing Director wanted him to leave. Having considered the history of the working relationships in the respondent company the Tribunal finds that it was not unreasonable in the circumstances for the Managing Director to attempt to reach a mutual agreement with the claimant to that effect.

For the above reasons the Tribunal finds that the claimant failed to discharge the onus placed on him under the Unfair Dismissals Act 1977 to show that the respondent's conduct was such that it was reasonable for him to resign from his employment and claim constructive dismissal. The claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

