

## EMPLOYMENT APPEALS TRIBUNAL

### APPEAL OF:

Employer

### CASE NO.

UD1161/08

against the recommendation of the Rights Commissioner in the case of:

Employee

**under**

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. B. Kealy  
Ms M. Finnerty

heard this appeal at Dublin on 8th December 2008.

### **Representation:**

Appellant: Ms Liz Walsh B.L., instructed by Mr Derek Stewart, Solicitor, 12 Parliament Street,  
Dublin 2

Respondent: In person.

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an employer (the appellant) appealing against the recommendation of the Rights Commissioner under the Unfair Dismissals Act, 1977 to 2001 ref. R-060259-UD-08/RG.

### **Respondent's Case:**

The respondent gave evidence. He commenced working for the appellant as a Conference and Banqueting Manager on 9<sup>th</sup> October 2006. He reported to the General Manager.

His working relationship with the General Manager deteriorated in the summer months. The General Manager contended that sales in the Conference and Banqueting area had deteriorated and blamed him for this.

As a result, the respondent suffered from stress and was absent from 20<sup>th</sup> November 2007 to 10<sup>th</sup>

December 2007. He personally hand delivered medical certificates to cover his absences. He handed his first medical certificate to the General Manager and she said she would see him when he was ready to return to work. He delivered his second medical certificate to the receptionist.

On Friday, 7<sup>th</sup> December 2007 he spoke to the Assistant Conference and Banqueting Manager and arranged the roster for the following week. He was due to return to work on Tuesday, 11<sup>th</sup> December 2007 at 8 a.m.

He telephoned the General Manager on Monday, 10<sup>th</sup> December 2007 and told her that he was fit to resume work and was returning on 11<sup>th</sup> December 2007. The General Manager said “no you are not, come to see me on Wednesday, 12<sup>th</sup> December at 3 pm”. That day also the respondent received a text message from the Assistant Conference and Banqueting Manager informing him that a new Conference and Banqueting Manager had started and wished the respondent all the best for the future.

The respondent attended a meeting with the General Manager and the Assistant General Manager on Wednesday 12<sup>th</sup> December 2007. He had not been informed in advance the purpose of the meeting and was not permitted to have a witness present with him. The General Manager opened the meeting asking inappropriate questions such as when he first saw his doctor, what the doctor had said to him, his doctor’s name, what his new address was and why he was under stress. The respondent answered all of her questions. The respondent said that the General Manager was the cause of his stress because of the way she spoke to him and other staff in the company.

During the meeting the General Manager contended that she had been trying to contact the respondent over a four-week period by letter and by telephone. The respondent said he had not received any letters. The General Manager asked the respondent to call on Friday 14<sup>th</sup> December 2007 to get his hours for the following week. The respondent said he expected to get paid for the week commencing 10<sup>th</sup> December 2007. He then called the General Manager a “lying twit” but before the meeting ended he apologised for this outburst.

On Friday, 14<sup>th</sup> December 2007 he called to the hotel to get his hours for the following week. He met the General Manager and the Assistant General Manager and was told that his position had been terminated and that a new member of staff had been appointed to replace him. The respondent then asked twice if he was no longer the Conference and Banqueting Manager and was told twice he was not. He was offered work in the Food and Beverage Department. The reason the General Manager replaced him in the position was because she could not contact him and thought he was not returning to work. The respondent insisted that he should receive his job back. He then said that he would have to resign.

On 17<sup>th</sup> December 2007 the respondent tendered his resignation. His letter crossed with a letter of same date from the General Manager received by him on 19<sup>th</sup> December 2007 asking him to see a doctor nominated by the company. The purpose of the letter was to identify the cause of his stress.

By letter dated 2<sup>nd</sup> January 2008 the General Manager informed the respondent that his position as Conference and Banqueting Manager had not been terminated. In a telephone call to the General Manager on 4<sup>th</sup> January 2008 the respondent requested his P45 be sent to him. His employment ceased as of 22<sup>nd</sup> December 2007.

The respondent replied to the General Manager’s letter dated 9<sup>th</sup> January 2008 and enquired if he

was being offered his position back and under the same terms and conditions and the same contract. The General Manager in her reply indicated to the respondent that he had in fact decided not to return to work and that he had requested his P45 be sent to him. The P45 was sent to the respondent as requested.

The respondent had not secured work since the termination of his employment.

Under cross-examination the respondent contended that he could not recall ever receiving the Employee Handbook. He was not aware that he had to inform the company of his change of address. His telephone number remained the same.

The respondent contended that the General Manager knew she was bullying him and that he had to put up with a lot and at the same time carry on with his work. He was aware that the General Manager wanted to see him when he called in with his medical certificate on 3<sup>rd</sup> December 2007 but he did not want to see her. He had never been told that the new Conference and Banqueting Manager was employed on a temporary basis. He did not invoke the grievance procedures, as he was unaware of them.

In his job he learned from day to day how to manage staff. He could not accept the job of Food and Beverage Manager and he thought the General Manager was trying to humiliate him. If anyone saw him as a waiter they would be laughing at him. He thought out the consequences of resigning before he tendered his resignation.

### **Appellant's Case:**

The General Manager gave evidence. The respondent had worked with her in another hotel as a Food and Beverage Manager.

The General Manager was satisfied that the respondent had received the employee handbook. All employees are given a copy of this handbook when they commence employment and one is left in each department for reference. In weekly meetings she constantly referred to the employee handbook. After she received the first medical certificate from the respondent she tried to contact him on his landline and was told he no longer lived there.

On 3<sup>rd</sup> December 2007 she left word with the receptionist to contact her when the respondent came in. When she called to the reception area the respondent had left. She contacted the respondent's doctor to enquire if he moved address.

The appointment of a new Conference and Banqueting Manager was a temporary arrangement and tied them over. This new employee left the hotel in February 2008.

In a telephone conversation with the respondent on 10<sup>th</sup> December 2007 the witness told the respondent that she would not be available on Tuesday 11<sup>th</sup> December 2007 to meet him and he was rude and aggressive. She asked him to call to see her on Wednesday, 12<sup>th</sup> December 2007 at 3 pm.

On 12<sup>th</sup> December 2007, after the weekly meeting concluded, both she and the Assistant General Manager stayed back and had a discussion with the respondent. She expected the respondent to return to work. When the witness became aware that the respondent's stress was work related, she needed to find out what was causing the stress. He had never mentioned being stressed before.

The respondent's position was offered to another person on a temporary basis. The witness contended that the respondent was never dismissed. He requested his P45.

**Determination:**

The Tribunal carefully considered the evidence adduced at the hearing. The respondent was certified fit to resume work on 11<sup>th</sup> December 2007 but was prevented from returning to work that day. Instead he was asked to meet with the General Manager the following day. It is clear to the Tribunal that a decision was taken by the General Manager and the Assistant General Manager to terminate the respondent's position during the weekly meeting on 12<sup>th</sup> December 2007. The employer had unilaterally removed the respondent from his position without any consultation with him and intended to impose this change. This was a breach of his contract of employment. The Tribunal determines that the respondent was unfairly dismissed from his position. Accordingly, the Tribunal upholds the recommendation of the Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2001 and makes a like award as the Rights Commissioner.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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