

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

RP57/2007
UD165/2007

MN108/2007
WT46/2007

against
Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr. D. Morrison
Mr G. Hunter

heard this claim at Letterkenny on 8th July 2008
and 22nd October 2008
and 23rd October 2008
and 24th October 2008
and 22nd January 2009
and 23rd January 2009

Representation:

Claimant(s) : Mr. Niall O'Neill BL instructed by:
Gallagher & Brennan, Solicitors, 13 St. Columba's Terrace, High Road,
Letterkenny. Co Donegal

Respondent(s) : XXXX

The determination of the Tribunal was as follows:-

On the first day of the hearing it was agreed that the claimant's weekly gross wages was € 492.00.

Claimant's Case:

The claimant gave evidence. She commenced employment with the respondent in February 2002 as a domestic operative in the Psychiatric admissions unit of the respondent's premises working an 8 am to 17.30 pm or 17.50 pm shift.

There were no problems until management, in conjunction with the union, decided to introduce a new morning shift of 6 am to 2 pm in order for the cleaning of the unit to be completed before patients got up for the day. A notice was put up and the claimant and another staff member applied for it. The claimant told the Tribunal that no one else wanted to apply for it and the new times suited her as it would give her more time with her children.

The new shift began in April 2003 but some of the other staff were unhappy about it as some of them had to move wards. The new shift meant that a female staff member worked on the female ward and a male staff member on the worked on the male ward. Previously all the staff started at 8 am and could work anywhere in the unit.

One Sunday the claimant was asked to attend work, as they were short staffed. The following day one of her female colleagues was in the office complaining that the claimant had been given a Sunday shift, which was double pay.

On the first day of her new shift, April 14th 2003, one of her male colleagues (and union shop steward) told her she had no permission to carry out the new shift. P also asked her, in front of her Supervisor (hereafter known as Supervisor M), who had told her she could start the new shift. The following day she heard the General Services Manager (hereafter known as PB) asked a Supervisor (hereafter known as Supervisor V) to keep an eye on her.

Her colleagues began to treat her differently, slamming doors, laughing behind her back, timing how long she took to do things, spilling drinks on her clean floors, comments were made concerning her religious beliefs and telling her she was stupid. On one occasion when the claimant was preparing the dinner trays P came beside her, banged down the trays and splashed water all over her. Supervisor M told her she was not carrying out her duties correctly but she explained that the section he was talking about had nothing to do with her. Some of the patients and other staff observed how the claimant was being treated and commented on the fact to her.

At a meeting in April 2004 P verbally attacked her. When she tried to speak she was told she was “stupid”, “knew nothing” and should “live with the consequences”. Management and the union representatives were also present at this meeting. One of the union representatives (hereafter known as Rep A) asked PB to leave the meeting as he said that he wished to discuss a matter with his members.

Two days later she told her sister that she was being bullied at work. Her sister worked in another unit of the respondent’s premises. She was extremely upset. Her sister took her to the respondent premises to see the Consumer Services Officer (CSO) in Human Resources to see if she could help. She told the CSO what had happened since she taken up the new shift. The following day Supervisor M informed her that he had received a call from the CSO. He wanted to know what was going on as he had heard she had made a complaint.

On April 23rd 2004 she attended a meeting with PB and her sister. He told her that the “person he knew was not the person in front of him”. He contacted Occupational Health, as he knew there was something wrong. She attended Occupational Health and was signed off work. She continued to attend Occupational Health and was advised to see her doctor who was very surprised at her demeanour and was anxious for her mental health. She was prescribed medication.

She attended a Counsellor/Therapist on a number of occasions. The Counsellor wrote to PB on June 23rd 2004 regarding the claimant who was keen to return to work.

She returned to work in August 2004 but the situation worsened. She was isolated on a daily basis and

bullied. She told Supervisor M of her problems. She continued to see Occupational Health. The General Services Manager told her to see her union representative (hereafter known as Rep S). She went to see Rep S and told him what had occurred.

In January 2005 Rep S lodged a formal complaint on the claimant's behalf to the Assistant General Manager including two copies of statements from the claimant. He also requested a copy of the respondent's anti bullying policy and procedures. In March 2005 an independent Investigator was employed with the agreement of both union representatives, A and S, as both parties had rejected internal mediation. Rep S sent copies of the claimant's statements to him. She was happy the investigation had started.

She met with the Investigator in 2005 and was informed the investigation would take 3 to 6 months. The Investigator did not interview some of her alleged bullies. The Investigator's report was severely delayed in being published. The claimant's husband wrote to the respondent's senior management, T.D.'s, Ministers, the President and the Taoiseach to name but a few. By August 2005 she was very down, could not sleep properly and work was "getting on top" of her. One of her colleagues noticed and commented on it. When she was leaving work one day one of the staff in question banged the door in her face. In September 2005 she went to Supervisor V and informed her that she could not cope and was going on sick leave. She met with PB around Christmas time and talked about her returning to work. Her sick pay ceased to be paid in early 2006. She felt she had been let down and the respondent was not bothered with her anymore.

The Investigator's report issued in May 2006. The findings of the Investigator were read to the Tribunal in full. In short he found that the animosity from the staff in question was directed towards the shift and not the claimant, that there had been a "one-off" occasion of bullying at the meeting of April 19th 2004 but that it was not personal towards the claimant. Overall he found that the claimant's complaints were not upheld. He stated that he found it *"difficult to make recommendations in this situation. Management needs to be vigilant to situations where potential distress can arise. Trade unions are there to serve all members fairly and equally. For her part (the claimant) needs all the help which the (respondent) can provide to give her the support to cope with the situation"*.

The claimant stated to the Tribunal that she had been bullied on more than one occasion and felt that the six staff members involved had refused to be interviewed individually, would not sign off on statements and had dictated the course of the investigation. She did not know what to do next, received no advice from the respondent and felt she was to accept the report and just "get on with it". She felt that there was no point. When asked, she said that she had received word from Rep S of alternative employment in Ballybofey for 3 hours a week. She explained that this would not have suited as she had worked 4 days a week and every second Sunday. She had told Rep S she was interested in the position but later felt she could not take it as she felt she was unemployable and was not strong enough to return to work.

She continued to attend Occupational Health but was upset by a comment made to her about her not being able to stay off sick forever and she could get a job in a fast food restaurant. She did not attend Occupational Health after this.

She was forced to resign her position in 2007. She stated that the whole situation had ruined her and her family's lives but that her husband had been a tower of strength through it all.

On cross-examination she stated that when she first started work with the respondent there were no problems and all the staff had worked well together. It all went wrong when she started the new shift. Some of the other staff did not want it to commence. She stated that some of the staff had been

laughing at her and excluding her. She told the Tribunal that she could not understand why she had been singled out.

She had attended the Occupational Health and the Counsellor on a number of occasions. She stated that she had received the respondent's Employment Policy document from Rep S. There had been notices on the staff notice board but was not aware who the respondent's Support Contact Person was or that a person was available to talk to. She had spoken to her union representative S who had started the process of lodging her complaint.

On return to work from sick leave in August 2004 she said that she just "kept herself to herself" as the staff were aware of the complaint of bullying she had lodged. No one spoke to her even though they all had to work together. The General Service Manager had told her he would sort something out before she returned from sick leave and she assumed she would not have to work with these staff again. She continued to work until September 2005 when she again left on sick leave. She continued to meet with PB.

When asked if the Supervisor who was asked by PB to keep an eye on her was any help to her, she replied that she had been asked how she was getting on but she never really told her.

Eventually her counselling sessions ceased. When asked if PB had offered her alternative employment she replied that she told him that she would have been working a corridor away from the people who had been bullying her. She said that she thought she remembered getting a handbook from Supervisor M. When shown a list of signatures of staff that had received the handbook she said that her signature was on the list but that she did not remember getting the handbook on the Dignity At Work Policy. A number of dates of meetings with the General Line Manager were put to the claimant. She stated that her sister had attended some of the meetings with her and he had been helpful. When put to her that PB had addressed P's bad behaviour at the meeting in April 2004, she replied that PB had told him to stop saying things to her.

She agreed that PB had tried to resolve the matter informally but to no avail. He had asked for her complaint in writing. She was extremely upset at the time and this was why it took time to compile the written complaint. She went to see Rep S in October / November 2004 and gave him a written complaint on January 6th 2005.

She explained that on one occasion she was attending Occupational Health and was extremely upset. PB was contacted to attend the office, the claimant's husband also attended. PB told the claimant's husband on seeing the claimant demeanour that he was sorry he's let his wife down.

When asked why she had not given a reply in relation to the outcome of the investigation, she said that she had not been well at the time, her family were upset at the situation she was going through and she did not see any point in replying. She told the Tribunal that, at the time, she was not "fit to go on" and just wanted it "to all go away". She had received letters from Rep S in August 2006 who wished to contact her about an alternative position, her response, if any, concerning the Investigator's report and her sick pay but never responded.

On re-direction she stated that she had been bullied and that the result of the report had ruined her life. She stated that she could not remember if the offer of a Support Contact Person had been explained to her. She had not been given any support. She stated that after she had lodged her complaint no one had asked her about being bullied or cold-shouldered. She said that the staff in question did not want her to do the new shift, as she was not working there long enough.

The claimant gave evidence of loss. She has been receiving sick benefit since January 2007.

The claimant's husband gave evidence. He stated that he and his wife had 3 children. His wife commenced employment in 2003. As time passed she began to lose weight, was very pale and not herself.

In April 2004 his wife told him what had been happening at work. He could not believe it was happening. The following day his wife and her sister went to see PB. They attended another meeting the following Monday. In May 2004 he attended a meeting with her and PB who told them he was shocked and would look into the matter.

The witness told the Tribunal that he brought his wife to every meeting and would wait in the car. His wife returned to work in August 2004 and he thought everything would be sorted out. A week later she went to see a Counsellor. She came out of the premises and told him the counsellor wanted to speak to him. PB was also present and told him that he was "sorry for letting his wife down". He told PB how he would like it if his wife had been bullied. He felt PB had not done his job properly.

His wife continued to work and the situation continued. PB told her to see her union representative. She went in October 2004 but the witness did not attend. She was told to put her complaint in writing. At the time she was "broken down" and continued to see her doctor and Occupational Health. She continued to go downhill and after the Christmas period she was worse. She submitted her written complaint in January 2005. She continued to be rostered with the staff she complained had bullied her.

In November 2005 he wrote to the union representative, S, to enquire where the report was. He also wrote to the respondent's senior management, T.D.'s, Ministers, the President and the Taoiseach. Rep S told him "his hands were tied". He wrote to PB in December 2005. One politician received a reply in February 2006 from PB stating the report would be due in 2 weeks. He wrote again to the respondent. He wrote to Rep S in respect of the offer of an alternative position, he felt she would get the job. He was informed of a position as a care assistant and having discussed it with his wife she decided to take it. Rep S said he would discuss it with the respondent. They heard nothing back. The claimant was very depressed at the time and was ready to leave then the report was published.

On cross-examination he said that he understood that the Investigator's report was final. He stated that the counselling sessions were the best thing that happened to his wife and it was taken from her. One day he had brought his wife to the Occupational Health and waited in the car. She emerged in tears and very distressed stating she would return not to any more meetings. She had been prescribed strong medication since.

Respondent's Case:

The Assistant General Manager gave evidence. He gave a detailed list of his qualifications.

In early September 2004 he received a call from Rep A informing him that the claimant had made a complaint of bullying against 6 of his union members. His members were concerned that they would not be able to be defended. Rumours were spreading around the respondent's premises that they were bullies. The witness contacted PB who informed him of the claimant's complaint. PB had spoken to the 6 staff who denied the allegation and wanted the claimant's complaint in writing.

PB said he had difficulty obtaining the written complaint from the claimant and he contacted Rep A and informed him of the delay. He offered mediation between the parties but was later informed by A that they wanted the investigation to go to a higher level. He wrote to all 6 inviting them to a meeting. He received no response. He met 2 of the 6 a short time later and discussed the letter he had sent to

them and the incident. They said they would speak to their colleagues.

He received a call from Rep A some time later to say that the 6 would meet with him without the complaint being in writing. He met the 6 including their union representative A. He told them they could engage in the process without admitting any guilt. He left the room for them to discuss the matter. On his return the atmosphere had changed and none of the 6 wanted to engage in an informal chat but they wanted a written complaint. The witness stated that he tried on 3 occasions to deal with the issues but to no avail. He informed PB and Human Resources. At this point the claimant was on sick leave but her sick pay had ceased. He was asked and approved for it to be re-instated.

The written complaint was received in January 2005. He spoke to the 2 union representatives A and S; the 6 staff wanted a full investigation. A list of proposed Investigators were compiled. Both sides agreed on the person engaged. He received many calls in relation into the delay in the production of the report. He contacted Human Resources who in turn contacted the Investigator and explained how the parties were anxious for a report. The Investigator said he wanted to give a "quality report and not a speedy one".

In the Spring of 2006 he received a call from Rep S informing him of the unlikeliness of the claimant's return to the unit and requesting an alternative position for her. Human Resources looked into the matter.

On cross-examination he stated that he was not involved in introducing the new shift. He said that he was aware of the respondent's bullying policy document. He was not aware of a Contact Support Person in this case and staff had the right to use the service. It had been used in the past. He could not recall the names on the Contact Support list in 2004. He attended courses on bullying in the workplace and that management and Supervisors had attended at some time also.

When put to him he said that the claimant had her union representative to support her. He stated that staff could get support from wherever they wished. When asked what he thought of the near 2 year delay from when the claimant first made her complaint and the publishing of the Investigator's report he replied that they needed to have the complaint in full, know who the allegations were against and appoint an approved Investigator.

He said that he had spoken to the Investigator by telephone and was informed of the complexity of the case and the number of people involved. When put to him that the 6 staff had been obstructive in the investigation he replied that they were entitled to due process as well as the claimant. He had not been involved centrally in the investigation.

When asked had he not spoken to the Investigator about certain witnesses who were not interviewed he replied that it was not up to him to tell the Investigator how to run the investigation. When asked what he thought of the Investigator's conclusions he replied that he felt the conclusion was rational and reasonable. He stated that although the Investigator stated that the 6 staff had hindered the investigation by the fact they refused to be met individually and it was a disciplinary offence, they had not been disciplined for it.

He stated to the Tribunal that it stated in the Dignity at Work policy that there was an onward process mentioned if they wished to appeal a decision.

On re-direction he explained that the new shift had been introduced as per the respondent's Consumer Panel recommendation. The written recommendation had been sent to PB.

When asked by the Tribunal he said that it might have helped if the claimant had put her complaint in

writing. He said that he had not been directly involved with the claimant but had dealt with her union representative S. He again stated that both union representatives rejected mediation but he was unsure who had rejected the proposal first. When asked he stated that when complaints were made between staff Human Resources or PB usually dealt with it but that the union representative A had contacted him personally as it was a very serious allegation.

He did not suggest the claimant get a Contact Support Person and could not recall if anyone had mentioned the involvement of one. They had tried to expedite the matter but that there had been a number of people involved. The 6 named staff had been very stressed out by the matter and he had received calls from their families concerning their health and the delay in the publication of the report.

The (then) General Service Manager (PB) gave evidence. He explained his employment history with the respondent and other employers. He joined the respondent in 2000.

The claimant had been one of his staff. She was a very good worker and he had no problems with her. Her duties included cleaning and some catering duties. The Consumer Panel recommended changes needed to be carried on and, in consultation with the staff and unions, the new shift was decided. Cleaning would now be completed while patients were still in their beds. Volunteers for the new shift were requested and the claimant and one other were given the job to share between them, the claimant working 5 days and her colleague the other 2. At the time the claimant and her colleague had been temporary staff and the other 5 were permanent. The shift was to be reviewed after 3 months.

There was some reluctance from some of the staff to introduce the new 6 am shift, as 2 of the team would have to be moved to another ward in the unit. The shift was introduced in Spring 2003. The claimant received a premium payment for working the earlier shift. The shift worked well but as time went on Supervisor M informed him that 4 or 5 staff were not happy with the new shift. He said he thought they were unhappy because of the break-up in their friendship.

A staff meeting was held on April 19th 2004 to again review the new shift and other matters. It started okay but soon got out of hand. P made personal remarks towards the witness and the claimant. The witness said that he felt the majority of the remarks were made towards him. P was not happy with the claimant's shift. He asked P to refrain his remarks but to no avail. The meeting had to be abandoned. He wrote to the union and stated that he would not deal with P, a shop steward, in the future.

He did not meet up with the claimant until after she was contacted by the Consumer Services Officer who informed him she had seen the claimant and she had spoken of alleged bullying. The claimant and her sister meet with him some days later. The claimant was very distressed and her sister did most of the talking. He was very concerned about her and told her to go to her doctor and he would contact Occupational Health. He told her he would get a written complaint from her sometime in the future and told her to keep in contact. He had no notes of the meeting. He contacted her sister that weekend and asked her to contact him the following week. He spoke to the claimant's Supervisor who was unaware of any problems with the claimant.

He said he gave the claimant a copy of the Dignity at Work policy around this time. The claimant was seen by Occupational Health 2 or 3 days later and recommended time off work. He received a report from Occupational Health dated April 29th 2004. He met with the claimant on various occasions. He stated his priority was to get the claimant well. Although there were various drafts of the allegations there were no dates or times so he again told the claimant at another meeting that he needed the complaint in writing. He had witnessed what had occurred at the meeting in April 2004 but as not aware of any other incidents. He said that he had to remain neutral and find a common ground. He suggested she contact her union but was unaware when the representative came onboard.

When asked about the letter to him, dated June 2004, from Occupational Health stating that she felt it was “*the most overt case of bullying*” she had come across, he replied that he thought it was a bizarre statement saying it was bullying without investigating the matter. He stated that he could not agree with the statement. He said that the claimant was a very distressed woman and he was treating her health issues very seriously.

She returned in August 2004 on a 2-day week. He still did not have a substantive written report from her. The claimant seemed a different woman and was happy to return to work. He felt he could push for a written statement as the last draft he had was of August 2004. He offered her a change in position in another unit across the road. He asked her how she was getting on and she said she had no problems or issues. He had asked Supervisor V to keep an eye on the claimant. He stated that he was under some pressure from some of the 6 staff to have the allegation in writing, as they wanted to get the matter cleared up too. He said that he had tried to keep everyone apart. He did not receive anything else from the claimant after August 31st 2004.

The claimant went out on sick leave again in 2005 and the witness had some contact her by telephone. She told him she was fine but did not go into detail. The claimant informed him she had resigned. He asked her who had advised her to resign but did not receive a reply. He contacted Human Resources to see if there had been any notification from the claimant about her resignation but was told no.

When asked he said that he did not recall telling the claimant’s husband that he was sorry he had let his wife down. He said that he felt the respondent had done everything they could for the claimant and would not change anything done.

On cross-examination he stated that the claimant would not have been aware when he had asked Supervisor V to keep an eye on her. He said that he was aware that some “tweaks” needed to be made to make the new shift work. It agreed that the Sunday work was prized, as it was double time but that the other 6 staff had not lost their Sunday work with the introduction of the new shift. The claimant could have got an extra Sunday.

He explained that at the time he had a staff of 180 and was not aware of every problem in the unit and therefore was not fully aware of the claimant’s mental state. When asked, he said that he had been asked to leave other staff meetings in the past so parties could discuss matters privately. He stated that the only animosity he had witnessed towards the claimant at any meetings was on April 19th 2004. He was not aware of any animosity towards the claimant before that time. He stated that he could not recall the comments made to him by P that day. He felt he did everything he could to get the claimant well. He had no recollection of offering a Support Contact Person to the claimant.

He was not aware when the Dignity at Work policy was introduced but would have rolled it out as soon as it was given to him. It was scrutinised by the Tribunal at it came to light at the hearing that the rollout of the policy was February 16th 2004. (*The claimant had signed a document stating she had received a previous policy document in 2002*). He could not pinpoint when he had given a copy of it to the claimant. He said that he felt the claimant had had adequate support from her family, doctor and union representative.

He said the claimant had insisted on returning to work with the 6 staff in August 2004.

On re-direction he stated that the 6 staff were resistant to the new shift as it put them out of their “comfort zone”. Sunday pay was not an issue. He stated that Supervisor M did not inform him of any of the claimant’s problems.

No further evidence was called by the respondent. Notably none of the alleged perpetrators of the bullying were called.

The Tribunal considered the following:

Background:

This case involves allegations of bullying and further allegations of a failure of deal with the effects of the alleged bullying.

It is common case that the Claimant's complaints arose at the time and as a result of a change in shift practice, one that the Claimant cooperated with. The shift change did not have the support of the rest of the staff.

Staff meeting on 4th April 2004

A staff meeting was held on 4th April 2004. At this meeting a member of management was present (PB). During this meeting a colleague of the Claimant who was also a shop steward showed aggression towards the management arising out of the controversial shift change but notably also towards the Claimant personally. This was a significant fact and one that management should have dealt with more firmly.

If the bullying occurred prior to this meeting (and the Claimant says it did) or afterwards is irrelevant. The point is that management were aware from this point that a member of their staff was being ill-treated by a number of other members of staff as a result of a shift change that had been introduced by management. The decision to implement a shift change was one taken solely by management, not by the employees affected. If a member of staff was being ill treated as a result of that change, and management was aware of it, even as a once off event, the onus is on the management to deal with this pro actively. If management fails to act or under reacts to any instance of bullying, it is open to the perception that they do not have a responsibility to counter acts of bullying or worse, that they are standing over bullying behaviour. It was also notable at this meeting that not one other employee came to the support of the Claimant at the time she was harassed.

Bullying usually occurs in a non-overt way. This case is unusual in this respect; that an act of aggression was made towards the Claimant in the presence of a member of management. This should have alerted the management that there were immediate and necessary steps to be taken to remedy the unfairness of what had occurred. It further should have alerted management that if this is what occurred in the open with management as a witness, it might also be the case that the singling out of this member of staff might have been occurring during the working day also.

Instead, however, nothing was done by management either to investigate whether the Claimant was being singled out or bullied or to pro-actively remedy the unfair treatment that had been meted out to the Claimant during the meeting.

Allegations of Bullying

The Claimant gave evidence to the Tribunal that the bullying had pre dated the meeting. She also gave evidence that the bullying and isolation continued after the event but by now it was much worse in that she felt that she was being scape-goated for the introduction of the shift change, the management were aware of this after what had occurred at the meeting but still she was not reassured by management and

nothing was done to deal with the fact that she had been harassed so openly.

The management say that bar what happened at the meeting of the 4th April they were unaware of anything else going on.

PB accepted in evidence that, following the meeting; he did not take the Claimant aside and discuss how she had been treated. In his evidence he stated that he was more aware with the abuse levelled against himself rather than against the Claimant. However it was to be expected that he as a member of management that had been party to the introduction of an un-popular shift change might be subjected to criticism at such a meeting. It is quite a different matter if the resentment is directed towards an employee for facilitating a change which she had no part in making.

In any event matters came to a head two days following the meeting when the Claimant came to PB and made a complaint of bullying against a number of her fellow employees. It was conceded that from this point onwards the Respondent knew that there were very serious allegations of bullying had been made against employees of the Respondent.

As a witness to what had occurred at the meeting it is arguable that PB should have stepped away from the bullying investigation from this point. His ability to deal with the allegation of bullying against the other staff members was compromised by the fact that he was the only person who could have supported the Claimant's case as to the allegations of bullying which occurred at the 4th April meeting

The failure to step aside put PB in an invidious position which was that he, as the person in charge of assessing the complaint of bullying, he had to supposedly deal impartially with a complaint of bullying which was strongly resisted in circumstances where he was a witness to one of the acts of bullying complained of.

After the Claimant was sent to a number of counselling sessions and to an Occupational Health Assessor.

The bullying complaint was then put on a formal footing whereby the Claimant was invited to make a written complaint detailing the instances of bullying. This was to allow the fair determination of the matter as the alleged perpetrators of the bullying were strongly resisting the allegations being made against them.

The Claimant was severely unwell at the time. The Occupational Health Assessor, appointed by the HSE, described the Claimant as having suffered "the of the worst cases of bullying that she had ever come across."

The manager's reaction to this, under questioning, was that he thought it "bizarre" that the Occupational Health Assessor could make a finding of fact such as this, having only consulted with one party to the dispute. He felt that it prejudged the investigation into whether bullying had occurred or not. Something that he, as the investigator, had to be impartial about. As a result, this significant report appears to have been overlooked by management. It certainly did not appear to have given much weight which is peculiar as the report is one compiled by an expert in such matters.

The Occupational Health Assessor had been appointed to make a finding on the health of the Claimant. She was not making a finding of fact as to what had caused this. She had not charged with this task nor was she qualified to do so. Any reasonable interpretation of a report of this nature was that the Claimant's symptoms were of the worst kind she had come across in a case of alleged bullying. To dismiss the report as "bizarre" or "inappropriate" on the basis that it represented an finding which

might prejudice his investigation in to the bullying complaint, was to overlook yet again, significant evidence to support the Claimants allegations, namely that her symptoms were of the most severe form, seen by this expert. This report in no way could have bound the Respondent in investigating the allegation of bullying. It was merely a finding as to the state of the Claimant's health.

The Manager persisted in attempting to get the Claimant to put her complaint in writing. She appeared unable to do this during the summer period.

The written complaint did not have any dates and this is what the manager stated was necessary for the investigation to proceed.

The Tribunal does accept that management (as opposed to the manager who was dealing with the complaint the inappropriateness of which has already been referred to) was attempting to deal with the matter fairly by obtaining a detailed complaint so that it could be put to the other side in order that they could defend their position.

However while the management requested the written complaint it did not insist upon it and as time proceeded this created further problems; namely the matter was ongoing, was known to all the parties, but was not being acted upon.

At no point did the management state clearly to the Claimant's ongoing failure to specify what occurred, made this investigation impossible and unless the complaint was received in detail, the complaint would have deemed to not being pursued. This should have occurred.

Neither did management do the opposite, to sit down with the Claimant and help her through what they required in terms of detail.

A half way position was adopted which was this; time was passing, the alleged perpetrators were becoming frustrated that they had not received any detail as to they allegations being made against them, the Claimant was unwell and was having difficulties remembering the dates of the complaints but the management put no rigour on the situation. Matters involving allegations of bullying by their nature and by an ongoing lack of resolution, worsen with time, which was precisely what occurred.

By the autumn, no investigation into the allegations having been made, the alleged perpetrators sought that the investigation be abandoned and an independent arbitrator be appointed.

This occurred but not until March 2005

The fact that the independent arbitrators report was not issued until April 2006, two years after the complaint was first made is not entirely the fault of management. Their fault lies in the very significant initial period up until the Arbitrator's appointment, which was in March 2005, nearly one year after the first complaint was made.

The Tribunal does not find that the delays caused after the appointment of the arbitrator to be the responsibility of the Respondent.

The Tribunal has not considered the contents of a document entitled "Dignity at Work" as it was not proven that this document existed at the time these events occurred.

Determination

The Respondent's contention that they acted in a fair and reasonable manner towards the Claimant is rejected by the Tribunal. When allegations of bullying are made to a Respondent, or indeed witnessed by a Respondent, and the acts of bullying are severe in nature, there is an onus on an employer to deal with issues proactively and promptly. What occurred at the meeting of 4th

April 2004 was extraordinary and the Respondent should have taken immediate action to ameliorate the situation. An employee cannot be permitted to be treated adversely by fellow employees when management are aware, or are witnesses (in this case) to the fact that the adverse treatment has been caused by the introduction of shift change by management. In this case there was a failure by the Respondent to proactively manage difficulties that resulted from a contentious shift change. There was a failure to proactively manage the situation once the complaint of bullying was made in April 2004. There was a failure to properly or adequately deal with the situation and this was allowed to persist over too long a period of time, until the Arbitrator was appointed in March 2005. These failures resulted in the work conditions for the Claimant being intolerable. In the absence of any evidence to the contrary it is credible that the Claimant suffered from being isolated and bullied within the work place and the Tribunal finds that the Claimant further suffered by the Respondent's failure to properly and proactively investigate the allegations made for the period of a year between April 2004 and March 2005. The Tribunal finds that the Claimant was constructively dismissed and awards the Claimant € 28,536.00.

The claims under the Redundancy Payments Acts, 1967 to 2003, the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and the Organisation of Working Time Act, 1997 were dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)