

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee - **Claimant**

UD313/2007
MN208/2007

against

3 Employers

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr. D. Morrison
Mr. P. Clarke

heard this appeal at Dublin on 3 April, 17 July and 13 October 2008
and 8 January 2009

Representation:

Claimant:

Ms. Niamh Ginnell B.L. instructed by Ms. Sinead McGoldrick,
Mullaney's Solicitors, Thomas Street, Sligo

Respondent:

Ms. Michele O'Boyle, O'Boyle Solicitors,
Courtyard, The Mall, Sligo

The determination of the Tribunal was as follows:

This being a claim of constructive dismissal, the onus is on the claimant to prove her case.

The claimant was employed from October 2000 as a part-time cleaner in licensed premises, which, at the time of the incidents that led to this claim, were owned by the three named respondents. The employment was uneventful until some time in December 2006 when the claimant became involved in a disagreement with a co-worker (BL) over the tenancy of BL's daughter in a

residential property in which the claimant had some involvement. As a result of this it was necessary to adopt a more formalised approach to matters such as the rostering and allocation of duties of the cleaning staff. The claimant's position was that she was upset about the complaint against her by BL as she had helped BL in her work.

On the morning of 20 February 2007, when the General Manager (GM) arrived at work some time after 9-30am, the claimant requested GM to ask BL to get soap as she would not respond to such a request from the claimant as she was not working co-operatively. GM in dealing with this situation asked the claimant not to cause any more upset. He was reluctant to get involved in the dispute between the claimant and the co-worker, as it was not a work related matter.

Some five minutes later BL approached GM in a hysterical and shaking state. BL told GM that the claimant had confronted her in an aggressive way in the upper floor bathroom. The claimant in her evidence to the Tribunal accepted that a conversation had taken place between her and BL but denied that she was confrontational or aggressive in any manner

BL told the Tribunal that she was a sensitive person who preferred to avoid conflict. BL complained that the respondent had no formal grievance procedure to deal with the confrontation that she said had occurred. She did not consider that the claimant was a racist. GM had heard no argument between the claimant and the co-worker in the intervening period. Whilst he was unable to get any coherent information from BL he got indications that the claimant was involved. GM then asked the claimant in very blunt terms about what she had said to BL and reminding her that he had asked the claimant to leave BL and her daughter alone. The words spoken at this time were accepted by GM as being: "what the f*** have you done to her Bridget?" GM accepts that he made the assumption that the claimant was at fault in whatever had happened between the two ladies. Following this, an argument developed between GM and the claimant whereby the claimant alleged that GM was being one sided.

GM sent the claimant, who was also upset, home with instructions to return the next day to talk about the situation with the co-worker and that he would be going down the disciplinary route with her with regard to her behaviour towards him. The claimant attended at the premises on the morning of 21 February 2007, placed a medical certificate on the bar and left immediately. This certificate referred to work related stress. The Operations Manager, OM who witnessed the claimant leave the medical certificate, did not enter into any discussion with the claimant. A letter was prepared with the assistance of a personnel manager from Dublin, dated 20 February 2007, and signed by OM in the name of GM. This warning letter set out a series of complaints about the claimant's behaviour, including a finding that the claimant had been involved in racist and bullying behaviour. It was posted to the claimant on the afternoon of 21 February 2007. The claimant's position was that she had lost all confidence as a result of being unable to cope with the allegation of racism against her. She felt that she had got no loyalty from her colleagues and felt isolated. She was not aware of any grievance procedure.

Determination:

Whilst the Tribunal accepts that the claimant may have been somewhat both defensive and overbearing in her attitude towards BL it is clear that, on 20 February 2007, it was reasonable for the claimant to assume that GM took the side of the co-worker against the claimant following the incident that led to the claimant being sent home with the suggestion of disciplinary measures being taken against her.

No proper enquiry was ever conducted into this incident yet, when the claimant went on certified sick leave, the day following the incident, which the employer knew to be work related stress, rather than attempt to calm down the atmosphere that had developed (which was at least, in part, due to the comment made to the claimant by GM), a letter issued to the claimant in which the respondent made findings of racist and bullying behaviour.

These findings were totally without foundation and without any proper inquiry.

For these reasons the Tribunal is satisfied that the claimant was entitled to consider herself constructively dismissed on account of the unreasonableness of the employer's behaviour towards the claimant.

In assessing loss the Tribunal has taken into account the fact that the premises closed and ceased operation on 1 August 2007 and while the claim for on going financial loss ceases at this point, the claimant would have been entitled to a redundancy lump sum at that point.

Taking all these factors into account the Tribunal awards €6,000.00 under the Unfair Dismissals Acts, 1977 to 2007. A claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 does not arise in a case of constructive dismissal and therefore must fail. With the consent of the parties this award is made jointly against the three named respondents.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)