

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

- *claimant*

UD771/2008

against

Employer

- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. B. Garvey

Members: Mr. L. Tobin
Mr. Al. Butler

heard this appeal at Dublin on 20 November 2008 and 12 February 2009

Representation:

Claimant: Ms. Mary Fay BL instructed by Micheel Nuding of Denis I. Finn Solicitors,
5 Lower Hatch Street, Dublin 2

Respondent: Ms. Rhona Murphy of IBEC, Confederation House,
84/86 Lower Baggot Street, Dublin 2.

The determination of the Tribunal was as follows:-

The claimant's representative made an opening statement that her client was subjected to bullying, harassment and isolation in the workplace. This resulted in him suffering from depression and being out sick from work. He returned to work on two occasions and brought the bullying to the attention of his employer but his employer did not address the situation. Eventually he was forced to resign because of the treatment he suffered and remarked that there are similarities to this case and the Liz Allen case. He has been unfit for work since he resigned. The claimant's representative intended to call on medical evidence to support her case.

The respondent's rep replied that they were unaware of the nature of the claimants position i.e.: that he was unfit for work since he resigned. The claimant was deemed fit for work by the company doctor and the respondent rejects that the claimant was isolated in the workplace. He argued that the Liz Allen case be set to one side by the Tribunal.

Subpoena Application

On the second day of the Hearing the doctor for the claimant was not present to give evidence. This was the second occasion on which the claimant's doctor was expected to appear and give evidence on his behalf but on both occasions the doctor did not appear. The claimant's representative requested that the Tribunal issue a witness summons for the doctor. The Tribunal did not make a decision on issuing a witness summons and directed that the claimant commence giving evidence.

Claimant's Case:

The claimant gave evidence. He commenced working for the respondent in 1994. The owners of the business changed over time. He was a materials planner and he ordered parts for computers. At first he was based in Santry but was transferred to Leixlip when the Santry premises closed. He had difficulties with his manager who ignored him and would not talk to him. In December 06 he complained to HR about his manager but received no response.

The claimant was on sick leave from January to June 2007. When he returned to work his manager treated him the same way. The manager ignored him. He was paid while on sick leave.

The claimant went on sick leave again in August 2007. This time he was not paid. In September 2007 his doctor certified him fit to return to work. The respondent's doctor saw him on 11 October 2007 and certified him fit to work.

He met with the logistics manager and the HR manager on 31 October 2007. They told him that his manager did not want him working on contracts. On 7 November 2007 the HR manager wrote to him with a list of current vacancies in the company and requesting that he forward a CV if he was interested. He was surprised by the request for a CV as he had worked for the company for more than 10 years. On 13 November 2007 his solicitor wrote to the respondent requesting that he be returned to his position. He was called to a meeting with the logistics manager and the HR manager on 28 January 08. The next day he returned to work.

The claimant had problems immediately he returned to work. Before his illness he was on a flexi-time arrangement and could finish work at 4.00pm. On his return he was expected to work fixed hours from 8.00am to 4.30pm. He was given a temporary badge that gave him entry to the building. However the badge did not apply to the office. If he left the office he had wait for someone with an office badge to come along to let him in again. Also he was not given a logon or password for the computer system. Not having access to the computer system was a difficulty because most business communication was by email, and he could not receive email and if he needed to send an email he had to use a colleague's computer. He could not work without computer access. He went to work everyday and read the paper and his colleagues laughed at him because he was not doing any work.

He sent an email to the warehouse manager using a colleague's computer. He wanted a work plan, a badge and access to the computer system. He got a badge on 11 February 2008. The warehouse manager did not reply to his email or to text messages or voice messages left for him.

The claimant had no faith that the HR manager or the logistics manager would sort out his difficulties because they had done nothing about his difficulties with his manager.

The situation was impossible. The claimant left on 29 February 2008.

Decision on Subpoena

The Tribunal decided not to grant a subpoena for the claimant's doctor. The evidence from the claimant did not justify issuing a subpoena.

Respondent's Case

The security administrator for the site where the claimant was assigned on 29 January 2008 gave evidence. When an employee starts on the site an employee number is generated overnight. It can then take 5 days for the number to filter down and have a logon and badge assigned to the employee. The claimant's logon and badge were available on Friday 8 February 2008.

The logistics manager gave evidence. He met the claimant in December 2006. The office was closing in June and the claimant would relocate to Leixlip. The relocation was the only discussion. The claimant's manager was not mentioned.

The claimant attended a meeting in October 2007. The claimant did not want to return to Leixlip. The claimant complained about his manager and was asked to put his complaint in writing.

The HR manager gave evidence. In October 2007 the claimant said that he did not want to work with his manager. He said the manager said hello to other employees but not to him. The HR manager asked the claimant for times and dates and witnesses. She did not hear from him. She agreed that the grievance procedure does not require a complaint to be in writing. She accepted that she should have given the claimant a copy of the grievance procedure.

She thought it likely that she received the letters dated 13 November 2007 and 23 November 2007 and addressed to her by the claimant's representative but did not recollect responding to them. She had not been instructed not to reply to the solicitor's letters.

The warehouse manager gave evidence. He did not have daily contact with the claimant. He got an email from the claimant on 29 January 2008. He did not reply even though he wanted to let the claimant know that they were working on getting him a badge and a logon. The claimant was on the computer system by 11 February 2008 and he assumed the claimant was informed. The claimant was idle until he was given access to the computer system.

Determination

The Tribunal carefully considered the evidence adduced and the submissions made by both parties. When the claimant returned to work on 29 January 2007 he did have difficulties with obtaining a badge and a logon. When the claimant contacted the warehouse manager it was unfortunate that the claimant was not informed that his difficulties were being resolved.

The claimant was aware of the respondent's grievance procedure. The Tribunal finds that the

claimant's doubts about the efficacy of the grievance procedure does not remove from him the onus to use it before claiming unfair dismissal. The claimant failed to invoke the grievance procedure when he experienced difficulties at work in February 2008. Accordingly the case under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)