

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM(S) OF:**

Employee

against

Employer

under

**CASE NO.**

UD440/2008

WT185/2008

**UNFAIR DISMISSALS ACTS, 1977 TO 2007  
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. J. O'Connor  
Members: Ms. M. Sweeney  
Mr. K. O'Connor

heard this claim at Killarney on 19th November 2008  
and 10th February 2009

**Representation:**

Claimant: Mr. Peter Malone, Malone Hegarty Solicitors, Muckcross Road, Killarney,  
Co. Kerry

Respondent: Mr. Chris O'Donovan, IBEC Mid-West, Gardner House, Bank Place,  
Charlotte Quay, Limerick

The determination of the Tribunal was as follows:

Dismissal is in dispute in this case.

**Claimant's case:**

In her sworn evidence, the claimant confirmed that her employment commenced in the hotel on 15 August 2002. When the business transferred to the respondent in September 2006, the claimant had chosen to continue in employment. She was employed as a supervisor in the accommodation department of the respondent.

The claimant found that the job was challenging and she was on her own most of the time running the department. It was a four star hotel where standards had to be maintained. The claimant loved her job and maintained those four star standards.

When the claimant's immediate supervisor and her assistant left, they were replaced by two others (

*AOS and HW*). The claimant felt that she had a great relationship with her new immediate supervisor (AOS), though sometimes, this person could be a bit overpowering.

With the change in ownership, some staff left and were replaced. The new supervisors introduced new staff to the accommodation department. Most of the new staff were Eastern Europeans who had little understanding of English so explaining a task to them proved to be difficult. Because of the difficulty in explaining simple tasks, the claimant found that she ended up doing the tasks herself.

There were eighteen people employed in the accommodation department and the claimant found it difficult to bring some of them along. She felt threatened by some of them and by one employee in particular. She told this to her supervisor but nothing was done about it. The claimant felt that nothing was done because these staff were close to the supervisor and they were very good friends. On one occasion, a staff member abused the claimant in a foreign language. The claimant told this person not to speak to her like that again and to speak to her in English.

The claimant found it exceptionally difficult to carry out her task. Nothing was done when she highlighted her difficulties to management. She could not give an instruction to staff. They felt that they could do whatever they wanted such as taking time off and taking unofficial breaks. Her immediate supervisor had told her that this was okay.

On 30 August 2007, the claimant had met with KC of the HR department for what she thought was her appraisal. She had been informed of the meeting two weeks in advance but it had then been postponed. On 30 August, she had met KC in the corridor and had been told that the meeting was happening that day. At the meeting, she was told that it was not an appraisal but that a complaint had been made against her. A letter of complaint was put in front of the claimant. It was dated 15 August 2007, addressed to CH made by fifteen members of staff. It complained that the claimant made their lives difficult at work and they were unhappy coming to work because of her.

The claimant was shocked because she had a good working relationship with most staff in the department. She had a difficulty with five of the people named on the letter. The letter was completely out of the blue. Because KC was going on a month's holiday commencing the next day, PO was going to investigate the complaints made in the letter. The claimant was asked not to contact any of the staff named on the letter.

The claimant was in shock and disbelief at some of the staff named on the letter. She had difficulties with some of the staff so expected that the letter had come from these people, but not from the others. Despite being asked not to, the claimant confirmed that she approached three female members of the staff. One of these girls told the claimant that she had signed the letter because the rest had done so and if she did not, she would have had no friends in the hotel. Another girl had said that she had not known the content of the letter but had simply put her name to it. The third girl had said that she had been in Poland at the time of the letter and that her name had been used without her permission. Only one person had penned most of the signatures.

The claimant approached PO about two weeks later to find out what was happening. Her hands had been tied and it had been hard for to do her job in a difficult situation. She had difficulty with five people named in the letter and she felt that her immediate supervisor and her supervisor's assistant had become distant from her.

Another meeting was held on 18 or 19 October with the claimant, KC and PO. She only received verbal notification of this meeting and was not told that she could be represented at same. At this

meeting, the claimant was told to change her attitude and get back to work. A letter of complaint had been made against her that she had done something wrong but the wrong had not been explained to her. She felt let down and upset after the meeting. She found it exceptionally difficult to continue but just put a brave face on things.

Following this meeting, the claimant's hours of work were changed. A new supervisor was introduced over the claimant but because this person had little experience, she made many mistakes, which the claimant had to correct.

In early November, the claimant attended her doctor. She was emotionally drained and needed to talk to someone. She was getting no support from management and her supervisor had distanced herself. The claimant could not cope and found it exceptionally difficult to come to work and to work with the perpetrators of the letter of complaint against her. They were not getting on together and it was hard to work with people who had something against her.

On 7 November, the claimant came to the hotel and submitted a sick certificate and her letter of complaint to CH. She said that she felt that her immediate supervisor was bullying her, and also the staff that this supervisor had introduced to the hotel had ganged-up on her. In her letter, the claimant had asked why her immediate supervisor had distanced herself, why she had been removed from working on a particular floor of the hotel, why she was not been given her fair share of responsibilities, etc. CH had replied that he was aware of the complaints and that they were being investigated and that he would arrange a meeting.

On 12 November, the claimant met with KC of the HR department who took a statement from her. KC said that she would investigate same and get back to her. The next meeting was on 15 November. Present at this meeting was the claimant, the claimant's immediate supervisor (AOS) and KC. At this meeting, AOS denied knowledge of the letter of complaint made against the claimant. The claimant had wanted to know why she was being left isolated. She told KC that she was not happy and requested that all of the accommodation staff be brought together to establish who was wrong. However, KC had held up the staff's letter of complaint and said that she was standing by it and if more letters were required, the staff would write them. No one listened to the claimant. She had wanted to know why her concerns had not been addressed, why she was not supported and why dishonest people were believed. If she had been nasty and done something wrong, she would have admitted it. The claimant had requested further training from KC if she was doing something wrong but no support had been given to her.

After this meeting, the claimant had attended her doctor. She felt rotten. She felt that she had lost her job. She could have chosen redundancy when ownership of the hotel had transferred to the respondent. Instead, she had chosen to remain in employment. The claimant's complaint to her doctor had been on the way her immediate supervisor had treated her. The treatment had overwhelmed her and she could not deal with the people who had complained against her. Her doctor was concerned for her because of the nasty way she had been treated. From that time, sick certificates were submitted to the respondent. In February 2008, the claimant submitted her letter of resignation. This was the only thing that she could do. She could not go back and work with people she could not trust though she would have returned had all of the issues been resolved. The only contact the claimant had with the respondent following her resignation was an acknowledgement of her resignation letter. She had not expected anything else.

The claimant felt that she had a good relationship with the respondent. There had never been a complaint against her while in the employment of the previous hotel owner. She was honest and hard working. The claimant had major commitments and had not wanted to leave her employment

but there was no way that she could now return.

Loss was established for the Tribunal. After leaving the respondent, the claimant had attended an interview for a position in another hotel but following a request for a reference she got a telephone call saying that the position was gone. She found it very difficult to get a job and felt that she had been blacklisted. She had secured alternative employment since June 2008 but with reduced hours of work, evening work and at less pay.

*(The representatives opened a number of documents to the Tribunal).*

In cross-examination, the claimant confirmed that she had been employed as an accommodation assistant at the commencement of her employment with the previous hotel owners. At that time, she had received a contract of employment and the employee's handbook, which contained the grievance procedures. She was a member of a trade union and deductions from her wages had been made accordingly.

The claimant accepted that when her employment had transferred to the respondent so also had the grievance procedures and sick pay policy. However, she had never really taken the grievance procedures on board because things had happened so quickly. The claimant denied that she had been told that the first meeting she had following the complaint by the staff was only a counselling session, in line with disciplinary procedures. She had never really studied the grievance procedure on harassment and bullying. She had not made a complaint that she was bullied because she was not aware of being bullied while there but the staff's letter of complaint against her had been intimidating.

The original letter of complaint made by the staff against the claimant was opened to the Tribunal. However, when put to her, the claimant denied that this letter – original and copy – was the same letter that had been shown in KC's office on 30 August, but was completely different and was written on different paper. She had not been given a copy of the letter at the meeting and this had not been good practice. She agreed however that she had been given a letter which had outlined complaints made against her by staff of the accommodation department and that this letter had been signed by staff from the accommodation department. The claimant rejected the suggestion that a copy of the letter of complaint, signed by ten individuals and signed on behalf of five individuals on their consent, of the accommodation department had been offered to her and she had blankly refused same.

The claimant agreed that she was shocked, upset and in disbelief by the staff's letter of complaint, but she was not angry about it. She accepted that if the staff of the accommodation department had a grievance, it was legitimate for them to complain and they were entitled to make a complaint. She also agreed that there was an onus on the respondent to investigate such a complaint. However, such an investigation should not have been ongoing two weeks later and there was an onus on the respondent to approach her about it.

The claimant maintained that she had been called to an appraisal meeting on 30 August but at same was told about the complaint. She agreed however that appraisals are not conducted during August. She had been shown the letter of complaint and had been asked not to contact anyone about it because she was angry. At the meeting, the claimant had called the authors of the letter "the untouchables".

The claimant had naturally not accepted the complaint made by the staff of the accommodation

department because it had come out of the blue. The claimant had been baffled as to what she had done wrong because this had not stated in the letter. At the meeting, she had not been told that the staff's difficulties had been with her personal style of management and the way she managed them. She had gone into a defensive mode when told about the complaints and would not accept the complaints. She had highlighted two of the complainants whom she had difficulty in working with and who were friends of her supervisor.

The claimant was not told that her meeting with KC and PO was a counselling meeting. She did not accept, that because of her previous good employment record, the respondent had not felt it appropriate to get into a disciplinary situation. All she could remember was being told to change her attitude and get back to work. She did recall a conversation when KC had spoken about adapting her style because of the changing culture of new employees.

At the counselling meeting, KC and PO had wanted to talk about the difficulties that the staff had encountered. However, the claimant's attitude had naturally been angry and hurt and she had wanted to know the names that were on the list. She denied that she was angry or that she had been unwilling to discuss the situation.

The claimant agreed that she had attended a bullying and harassment course on 31 October 2008. However, she received nothing in writing from the respondent explaining that the purpose of the course was to assist supervisors.

Two days after the bullying and harassment course, the claimant submitted a sick certificate to the respondent. At the time she had been upset and did not recall saying that she had been the victim of bullying. A manager had suggested that she put her concerns in writing. By letter dated 3 November which was received by the respondent on 7 November and titled "letter of complaint", two general issues were addressed therein by the claimant, the perpetrators of the letter of complaint and the attitude of her line supervisor AOS. While referring to the staff that had signed the letter of complaint as "devious people", the claimant accepted that people do have the right to make a legitimate complaint. However, she was not angry at their complaint but was in shock and disbelief.

Following the claimant's "letter of complaint", KC met the claimant on 12 November. However, the claimant complained about the lapse of time between this meeting and the meeting of 30 August. At the meeting on 12 November, the claimant's letter of complaint and the issues contained therein such as breaks, early shifts, the authors of the letter of complaint and the attitude of AOS, had been discussed. The conclusion of this meeting decided that KC would follow-up with AOS on the issues raised and then a further meeting would be arranged with AOS present.

The claimant accepted that she had never made a formal complaint to the respondent about AOS's attitude towards her. The follow-up meeting with KC, AOS and the claimant took place on 15 November. The claimant contended that this meeting was organised at the 12 November meeting. She rejected the suggestion that it had been a cordial meeting or that further training had been discussed by herself and AOS.

When put to her that, at the meeting on 15 November, an offer of a supervisory/management course had been made to her and she had wanted it, that the staff's complaint letter of 15 August was discussed and she had reacted with anger, that she had been asked when she would be fit to return to work and had replied "in a couple of days", that rosters had been discussed, that she had been invited back to discuss any further grievances that she might have, the claimant could not recall any

of this. She rejected that both she and AOS had left the meeting together to discuss rosters.

The claimant submitted her resignation letter to the respondent on 11 February 2008 by hand. Up to that time, she had only visited the respondent to deliver her sick certificates. However, between November and February, she had no discussion with the respondent about the ongoing problems. It was put to the claimant that the respondent had been unable to contact her because she had moved to a new address, which was unknown to the respondent despite requesting same from her, and she did not answer her mobile telephone nor could the respondent leave messages on it.

The claimant confirmed that she was actively looking for alternative employment in November 2007 because it was best to seek another job while still in employment. She rejected the suggestion that it was reasonable for the respondent to assume that she had left their employment because the meeting of 15 November had resolved the outstanding issues, that no further grievance were made known to them and then they had received her resignation letter in February 2008.

The claimant confirmed that she was aware of the contents of a letter from the respondent to her legal representative wherein she was offered her job back and where they had stated therein that all outstanding grievance issues that had been raised by her had been resolved to the satisfaction of all parties. She had not been aware that AOS and two of the authors of the letter of complaint against her had ceased employment nor did she care as she herself had left. She had no confidence with the HR department or the respondent and so could not now return to a vacant position.

The claimant's efforts to find alternative employment had been left with an employment agency. She had been a free agent from February but had only secured alternative employment in June. It had been exceptionally difficult to find alternative employment in the period between February and June but the claimant could not recall if she had applied for work during that period.

Replying to the Tribunal, the claimant said that she imagined that the meeting on 15 November lasted about thirty to forty-five minutes. Following that meeting, the claimant felt that she could not return. The respondent did not have good work practices. She had only been informed of the staff's letter of complaint on the day before KC went on holidays. The issue had been referred to PO for investigation. However, because of the tense work situation, the claimant had approached PO twice for feedback but got no feedback from him, either verbally or in writing.

**Respondent's case:**

The Tribunal heard evidence from a witness for the respondent. She was asked if she had sight of the letter of complaint and she replied, "No". She did give permission for her name to be attached to the letter. She did not understand what all of the contents of the letter would be. She gave her permission because the other workers did not speak with her, as she was friendly with the claimant. She herself did not have a problem with the claimant.

The Tribunal heard evidence from the HR manageress. She worked in HR for seven years in the Great Southern group and then commenced with the respondent in September 2006. The claimant commenced in August 2002 as an accommodation assistant and was later promoted to supervisor. The claimant was a member of siptu and the hotel was a "closed shop". All employees got a copy of the grievance procedures.

The witness explained that the grievance procedures for the Great Southern and the respondent "were different but they were practically identical". There was a grievance and dispute procedure in place and this was drawn up in co-operation with siptu. The Great Southern evolved into the respondent hotel and was bought by a local businessman. The claimant transferred to the new owner.

The claimant was promoted soon after the hotel transferred. She herself approached the claimant and asked the claimant if she would consider being promoted. She and others felt that the claimant would be a good supervisor. The claimant was a valued member of the team and was a very hard worker. The claimant was promoted and she worked very well as a supervisor.

In 2006 ninety seven percent of employees took redundancy. Therefore they had no staff in the accommodation and used agency staff. They wanted their own staff and mostly east Europeans applied. The head of the department and the supervisors trained the new staff. It was not true that the new staff could take as many breaks as they wanted.

The witness met with the claimant in late August or early September. She did not tell the claimant or AOS that the meeting was an appraisal meeting. She showed the claimant the letter of complaint. She asked the claimant if she accepted the complaint and the claimant did not accept it. The claimant was upset and angry. She told the claimant that they could deal with it informally or formally. The claimant told her that she wanted a full investigation. She told the claimant that she was going on a month's annual leave but to be fair to all she would hand the matter over to the general manager (POS).

On her return from leave she established from POS that the workers concerns were well founded and that they had a grievance about the way the claimant treated them.

She and POS met the claimant on or about 01<sup>st</sup> September. They told her that they had found legitimate concerns about her treatment of staff. We spoke to her about people's perceptions about how they were treated. She asked the claimant to take a step back about how she spoke to staff. They told the claimant that it was a counselling (matter) and not a disciplinary (matter). Regarding representation for the claimant, it was not a disciplinary matter it was a counselling session. The claimant was very angry

After the meeting she organised a bullying and harassment course for the claimant as she felt the claimant was not taking what she had said "on board". She wanted to reinforce amongst the supervisors and management about bullying and harassment. The claimant attended the course. After the course the claimant sent a letter to her. She was surprised at the letter because she had told the claimant that she would monitor the situation. When she got the claimant's letter she contacted the claimant to discuss the issues. She met the claimant on 12<sup>th</sup> November 2007. They went through the points in the letter. She took extensive notes and went through the claimant's concerns. The claimant felt isolated from AOS. She told the claimant that she would contact her within a few days. She told the claimant that she would meet AOS and then revert to her.

She met AOS on 14<sup>th</sup> November and went through all the issues. AOS was surprised as none of the issues had been raised with her. AOS was surprised the claimant felt isolated. She suggested to AOS that the three of them would meet.

She asked the claimant to meet with AOS and her and the claimant agreed. They met on 15<sup>th</sup> November. AOS told the claimant that she was sorry and she did not realise how the claimant felt and she would do all in her power to deal with matters. AOS also told the claimant that she would reinforce to all staff that the claimant was a supervisor. The claimant said that AOS had not dealt with concerns that she had raised in the letter. AOS explained that she had not received the letter; that it had been given to management. They also discussed training at the meeting. She asked the

claimant if she would like to do more training and the claimant said that she would love to do more training. She suggested a supervisory course or people management course and the claimant agreed. She told the claimant that she would organise a course on her return to work. The claimant said that she thought that she could be able to return to work in a few days.

The witness explained that she did listen to the claimant's concerns. She left the meeting pleased as she felt she had put the issue to rest. She had asked AOS and the claimant to look at the work rosters to organise (training). AOS and the claimant left the meeting amicably and to go and look at the work rosters.

The witness heard nothing from the claimant after that and then the claimant sent in her letter of resignation. She tried to phone the claimant but her calls were not answered and the claimant did not have voice mail facility. She did not know that the claimant had moved house and she could not contact the claimant. The grievance procedures provided for recourse before a third party outside of the respondent work but the claimant never availed of this. There was no contact from the shop steward.

She received a phone call from a work agency in January, asking about a reference for the claimant and she gave the claimant a very good reference

**Determination:**

A complaint was tendered to the respondent and the respondent dealt with this informally. The claimant asked for a formal investigation.

The respondent did not apply formal strict procedures in relation to the complaint against the claimant. This was in the view of the Tribunal because it may have been adverse to the claimant. In the matter the respondent took the claimant's unblemished service into account.

The Tribunal are unanimous that the claimant was not unfairly dismissed by way of constructive dismissal. The claimant's job was still there up until the time she resigned. The claimant had the opportunity to mitigate her position.

The Tribunal dismiss the claim under the Unfair Dismissals Acts, 1977 to 2007.

No evidence was adduced under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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