

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

–*appellant*

CASE NO.
UD483/2008

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

Employer
under

–*respondent*

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr E. Murray
Members: Ms M. Sweeney
Mr J. McDonnell

heard this appeal at Waterford on 9th December 2008 and 10th March 2009

Representation:

Appellant: In Person

Respondent: In Person

The determination of the Tribunal was as follows:

This matter comes before the Tribunal by way of an appeal by an employee (the appellant) against the decision of the Rights Commissioner dated the 11th April 2008, reference-059012-ud-07 JOC.

Evidence was given by the appellant on her own behalf: She was employed as an administrative assistant by the respondent in a hospital in Waterford, and commenced her employment in April 2001. The appellant made complaints against a fellow employee, including a complaint that one of her colleagues had attempted to poison her by giving her a contaminated scone. She was unable to attend work as a result from the 23rd November 2004 and continued to be certified unfit for work thereafter. She made a formal complaint and an investigation was instigated into the complaint by the respondent.

In January 2005 she verbally requested her P45 for reasons unrelated to any intention on her part to resign from her position. Subsequently, she requested a transfer to a different Department, namely Community Care, but thereafter she further requested production of her P45 and ultimately consulted the Managing Solicitor of the Legal Aid Board in Waterford and by letter of the 18th October 2007 wrote to the Respondent as follows:

“I am instructed that the appellant was employed as Secretary/Administrator in the hospital from the 9th day of April 2001 until the 24th of November 2004. The appellant has never received her P45 from her employment at the hospital. I would advise you that the appellant has a right to be furnished with her P45. I would be obliged if you would furnish the said document as soon as possible.”

Evidence on behalf of the respondent was given by the Hospital Manager: The appellant made certain complaints against fellow employees, which the respondent proceeded to investigate under the terms of their Dignity at Work Policy. The appellant went on sick leave in December 2004. The respondent had certain concerns for the appellant and because of correspondence dated the 22nd March 2005, the respondent sought to have the appellant seen by its Occupational Health Department.

The appellant was seen by Dr. G who expressed concerns about the appellant's psychiatric health and in a letter to the respondent dated the 29th April 2005 indicated that, *"it is my opinion that the appellant needs urgent psychiatric referral for diagnosis, assessment and treatment."*

The respondent kept the appellant on sick leave and ultimately extended the sick leave period ordinarily available to employees. By letter dated the 30th September 2005 from Messrs. J. H & Co. Solicitors the appellant indicated that she was now fit and available to return to work. The respondent arranged a pre-return medical for her with Dr. G, Consultant Psychiatrist, who having examined the appellant reported to the respondent on the 8th November 2005 in the following terms:

"In conclusion, the appellant's health is the number one priority and it is my opinion that she continues to suffer from a psychiatric illness. I have no difficulty with her being referred to or attending her own Psychiatrist either here or in the U.K."

If you receive any correspondence from solicitors etc., I would be grateful if you would clarify with them that it is the advice of the Occupational Health Service that she needs psychiatric help and support and this should be the number one priority in assisting her prior to dealing with any other issues."

The appellant again requested her P45 in February of 2006 and was advised by the respondent that she would be required to resign her post prior to this document being furnished to her. In any event, the respondent was reluctant to terminate the appellant's employment having regard to the contents of the report they had received.

Ultimately when the appellant sought her P45 through the offices of the Legal Aid Board the respondent felt that she now had proper professional advice in relation to the matter, and in the circumstances, they facilitated her and furnished her with her P45, thus, terminating her employment. This termination was at her request.

Determination:

The Appellant in this case claims to have been constructively dismissed by virtue of the actions of her employers. Section 1 (b) of the Unfair Dismissals Act 1977 provides that dismissal includes *"the termination by the employer of his contract of employment with his employer...in circumstances in which because of the conduct of the employer the employee was or would have been entitled, or it was or would have been reasonable for the employee, to terminate the contract of employment."*

Having considered the evidence the Tribunal in this case finds the Respondent acted reasonably at all times in relation to its dealings with the Appellant. The Appellant requested her P45 on a

number of occasions and though she has alleged that she did not intend that request to be an indication of her desire to terminate her employment, nonetheless the Respondent could not have been expected to interpret it in any other way. The Respondent had concerns about the Appellant's health and acted responsibly in delaying in accepting the Appellant's request for her P45. Ultimately when a demand was made through a Solicitor they had little choice but to comply. Consequently the Tribunal finds that the appellant was not constructively dismissed.

Accordingly, the Tribunal determines that the appeal is not well founded; and therefore upholds Recommendation r-059012-ud-07 JOC of the Rights Commissioner.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)