

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

Employee

- claimant

CASE NO.

UD758/2008,

MN697/2008

Against

Employer

- respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly B L

Members: Mr C. Ormond
Mr G. Lamon

heard this claim at Dublin on 20th November 2008 and 17th and 18th February 2009

Representation:

Claimant: Ms Mary Guinness B L instructed by
O' Mara Geraghty McCourt, Solicitors, 51 Northumberland Road, Dublin 4

Respondent: Ms Kerry Molyneaux, IBEC, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

Claimant's Case:

The Tribunal heard evidence from the claimant. She trained in the UK as a nurse and qualified in April 1997. She worked as a general nurse. The further her career she studied renal medicine and began working in the renal field of work in 1999. Most of her work was dialysis. She worked in "Barts" hospital in London, which had one of the biggest renal units in Europe at the time she was there. She trained new staff and encouraged new staff. She was also a junior sister.

She then joined the respondent company. The respondent company is a private dialysis clinic. She was the respondent's first member of staff. All of the public patients that they dealt with were from Beaumont hospital. She was of the view that the clinic was part of the Beaumont hospital.

The staff started their shifts at 6.30 am and some started at 7.00 am. The claimant recruited all of the staff except one. The respondent had a clinic in Birmingham and the claimant studied how the clinic was managed. If nurses were needed the nurses could transfer from one clinic to another. All of the nurses excepting one nurse had extensive renal experience.

When asked if “taking of bloods” were part of the dialysis the claimant explained that was “very much” a part of dialysis “they are our guidelines”. The nurses were “very much” familiar with taking bloods.

The claimant’s line manager was also the regional manager was DB, and DB was based in the UK. She could e-mail or phone DB if she needed to communicate about day-to-day matters. DB’s response to queries was good. The claimant felt that she had not enough staff. When the patients increased they did get more staff. She did raise the question about staff with DB and DC who is the general manager and at a later time with M.

The claimant opened a document to the Tribunal. It was the points or minutes of a meeting about issues that were directed to the claimant. At the meeting was the claimant, DC and DB. The document was dated 18 December 2006. A prior connected meeting had taken place on 15 December. It also outlined matters to be put in place by the respondent. The respondent did not put in place neither did the respondent employ more staff. There was another matter that the respondent did not follow through on.

The claimant told the Tribunal that any confidence that she had “was blown away”. She stepped down from the clinical manager role to the staff nurse position. She told DC and another person that she was doing this and they were happy for her to do this. She was to stay in the management position until the respondent got a replacement for the management position and this was in December 2006.

An e-mail dated 22/12/06, sent by DC to the claimant, was opened to the Tribunal:

“Firstly thank you for your note dated 22nd December 2006 outlining your decision to step down as CM of May I take the opportunity to thank you for your work since April in helping to open the Clinic on the 29th November 2006.
Secondly I would like to extend an offer of Staff Nurse Grade as appropriate once we have secured a suitable replacement for the CM position, and on this note (the respondent) appreciates your positive response to a caretaking role in the interim.
I hope you and your family have a lovely Christmas and NY.”

An e-mail dated 07/02/07 was opened to the Tribunal. The e-mail confirmed that a new Clinic manager (also known as Ms D) was appointed.

The claimant was asked if Ms D started in her role as Clinic manager. The claimant replied, “No she declined the position”. The claimant further explained that she, herself, was still in the position as Clinic manager up until the time of her resignation.

There was an audit due for December 2007. All the work had to be checked: the nursing records, documents relating to machines, anything to do with patient care, was all checked by an auditor.

An e-mail dated 11 November 2007 that the claimant had sent to DC was opened to the Tribunal:

“As per our conversation on Monday I’m just giving you an idea as to why I need a staff nurse, Increased patient numbers, staff holidays and illness, cover for these shifts are required and it is not always possible to get agency /bank to cover. Also if two members of staff are sick at one time and I can’t get cover then we would have problems.
We have now got our isolation patients and have only 2 pts who have twice weekly dialysis

and our patient quota shall be at a maximum.

I sincerely hope you take this information into account and I would very much appreciate your authorisation of a new staff member.”

The claimant was asked if any of the objectives that had been set out the previous December had been put in place and she explained that no healthcare assistants had been provided.

At the end of January the claimant’s brother died suddenly. The claimant was on stress leave. She was brought back early, as there was a shortage of staff. ML who was the claimant’s Irish regional manager phoned the claimant. ML had commenced work in December 2007. ML had taken over the position from DB.

On February 20th the claimant’s sister was taken to hospital in Limerick. The claimant explained this to ML and she left to go to her sister. Between 20th and 27th February an issue arose about the “bloods”. The claimant was not in work between 20th and 27th February.

The claimant was asked if she had a deputy who worked for her. She replied that she had not and the reason that she hadn’t was because the staff were competent and very qualified.

The claimant was asked to describe the “procedures of bloods”. “Once a month the renal patients get bloods checked, to have the guideline from the previous month, potassium’s, ureas and lites”. “Bloods were taken and couriered to Beaumont hospital to be tested. The blood results were faxed back us in a day or a day and a half”. It was unusual for a patient to have a result with high potassium.

The claimant returned from leave on Wednesday 27th February. It was a normal working day and she proceeded with her duties. She asked the staff if all was ok and it was. On Friday she asked if the cumulative work report was sent in/filled in. she was told that it was not as there was a problem with the bloods and the bloods had to be re-tested. Circa Monday 10th a professor was to do reviews of his patients. The professor did the reviews once a month and the claimant had the files ready for the professor as she would normally have. She handed him the first report and he noticed that the potassium level was high and there was no result for the repeat test. The other patient’s tests showed high levels of potassium. If potassium levels are extremely high it can lead to death. The professor decided, “to have a walk around and chat with the patients”.

The claimant met with a colleague and asked her to talk to ML and give ML a synopsis and to inform her about the professor.

The claimant met with ML and the professor. The claimant was told that a meeting would be held on Friday 14th March. She met the staff and told them that they would repeat the bloods as a precaution.

The claimant was asked if ML indicated as to whether responsibility lay with her. The claimant replied, “She felt that she could keep in house that is between Dublin (the respondent) and Beaumont area, I asked what my situation was and she said that it was not looking very good”. “She said at a meeting on Wednesday 12th that my head was on the board for the chop and that was said in front of staff”.

On Friday 14th the staff had to meet with the professor and Dr. C and Dr. M to explain individually. The claimant met the consultant for the respondent on Friday 14th, she asked him if her job was ok

and he told her that it was not for him to say.

The claimant had booked annual leave for the following week. The claimant had leave booked to travel to London to attend a family matter. She asked ML if she could still take the leave and ML told her that she could.

The claimant told the Tribunal that she was fearful about her job and that, "I did not know where I stood, I was going out of my head".

On Wednesday 19th the claimant was in London and ML phoned her. ML told her that she had two options one was to resign and get a reference or two that she would be suspended and an investigation would take place and when she was found guilty she would be dismissed. The claimant told her that she would need time to think about the options.

The company disciplinary procedures were opened to the Tribunal. It was put to the claimant that when she was in London she was given a choice. The claimant agreed.

The claimant was interviewed and she was not given information for the basis of the interview. The claimant was not given statements from the staff. The claimant got a letter dated 04 April 2008 that confirmed that the disciplinary procedure was being followed.

On 07 April the claimant's solicitor wrote to the respondent. The letter was opened to the Tribunal:

".....

We reiterate our client's position as set out in previous correspondence. In circumstances where, allegations of misconduct have been made against our client; our client has been absent on suspension since 19th March 2008; and a disciplinary process has already commenced, (the claimant) is entitled to all information in her employer's possession in relation to the subject matter of the investigation, prior to being required to respond to the allegations against her. We note that (the claimant) has already been invited to resign by (ML) on 19th March 2008

Our client requires full details of the investigation that has taken place to date. Please provide a list of all parties interviewed as part of your enquiries. Please provide our client with a copy of all witness statements and all other documentary evidence or information in your possession in relation to the allegations against her.

Our client will attend the meeting at 4.30 p.m. today as requested by you. Please note that she will require an opportunity to consider the foregoing information prior to commenting on the allegations against her. We trust that our client's entitlement to natural justice shall be complied with and that no steps will be taken by you to progress this matter, until all information in your possession in relation to the allegations have been provided to our client".

The claimant went to the meeting on 07 April. Present at the meeting were: the claimant and her partner, and SW who was the UK Director of Clinical. The claimant was given the staff statements when she requested them. The statements were opened to the Tribunal. The statements were by four staff nurses. It was ML who questioned the staff nurses. The claimant was given the statements as evidence against her.

The claimant was also given another document at the meeting. This document dated 10 March 2008 by ML was opened to the Tribunal:

"Points noted from discussions with nursing staff:

1. Nurses do not always record blood results in the cumulative lab report on the same day they are received in the clinic.
2. One nurse orders the monthly bloods for all the patients once a month. There is a standard list of bloods tests.
3. At times, nurses need to contact Beaumont to request additional patient labels for repeat blood tests.
4. If and when repeat bloods are submitted with hand written labels and without Beaumont issued coded labels –they bottles usually go missing.
5. Nurses usually do not record any patient care related procedures apart from times of starting and finishing dialysis. Blood results, medical orders etc., are not frequently recorded in Finesse.”

Regarding the first point (monthly bloods record of blood results in the cumulative lab report) there was not a written guideline. Regarding point two (monthly bloods, standard list of bloods) there were written guidelines. The claimant explained that Finesse was a computer programme.

The claimant was given two documents at the meeting. SW told her what she was going to ask her at the meeting. The claimant did not comment on the questions. SW said that she wanted to hear the claimant’s side of the story and that it would be relaxed and informal. The claimant asked SW if she could take the documents home to read.

The following day the claimant met SW. SW told her that she had nothing to worry about that she was reinstated, that she had nothing to answer to. The claimant asked her if she could take the day off. Even though she had been off for two weeks she had been stressed and worried so she just needed one day and she could get one night’s sleep. SW told her to come back to work the following day and to use her anger positively.

She rang ML to ask for another day off and therefore would be ready to meet the patients the following Friday. ML told her that she was to come in on Wednesday, but that she did not have to arrive until 9.00 a.m.; the claimant normally started work at 6.00 a.m.

The claimant arrived in the next morning and met SW. SW told her that she had nothing to worry about; that she was reinstated. ML arrived and the claimant was in her office. ML called into the office and asked the claimant to get changed into uniform and she would bring the claimant “up to speed”. The claimant asked ML what the reaction was of Beaumont hospital that she had been reinstated. ML told her that TF needed “some selling”. The claimant asked who TF was and ML told her that he was the assistant director of HSE.

The claimant told the Tribunal that she spoke to ML about annual leave and sick leave, and what would happen if she were on sick leave. ML told her that the clinic needed a manager at all times.

There were meetings with Beaumont hospital and DB, DC and the claimant attended the meetings.

The claimant told the Tribunal that she worked 39hours per week Monday Wednesday and Friday. The patients were in the clinic Monday Wednesday and Friday from 6.30 a.m. to 6.30 p.m. Her responsibilities other than the patients was ordering stock, testing water quality, staff rotas and general managerial duties.

Then ML called to her and ML produced sheet of paper. The claimant’s hours of work were to be changed to 7.00 a.m. to 5.00 p.m. Mondays and Wednesdays, 9.00 a.m. to 2.30 p.m. on Tuesday’s

and Thursdays and 7.00 a.m. to 3.00p.m. on Friday. Also twenty of her working weekly hours were to be spent working with the team “on the floor”. There was no discussion about the changes; the claimant asked ML if there was to be flexibility about the new arrangements and ML said there was none. These things all happened on her first day back from suspension.

The next day the claimant was in work and was working according to the changes. The claimant sent an e-mail to ML requesting the minutes of the meetings that occurred between Beaumont hospital and the HSE. Later that morning ML called to the claimant and asked her why she wanted minutes. ML told her that she would be happy to tell her what happened at the meetings and that no minutes were taken at the meetings.

A meeting was due for the following week and ML told the claimant that there was no need for her to attend. The claimant felt at this point that “there was no point in her being there”; “what’s the point in me being clinic manager if I (am not) informed of what’s going on”.

Prior to this situation there was a burglary at the clinic. The emergency doors were padlocked. The claimant told ML about this and ML told her that there was a key available at the nurse’s station. ML did not take her concerns on board.

When the claimant returned from her suspension her office was not as she had left it. SW had arrived from the UK. They had been using the conference room to keep the files and SW was not happy about this (files moved to the claimant’s office).

The heating had broken down and the claimant would normally deal with the situation but she had to “hand over the information”, to ML; ML asked her to give her the details of the people to call and that she (ML) would rectify the situation.

At some time ML had told the staff that the claimant was out on gross misconduct. The claimant felt that she was still being blamed and she was bewildered, as she had not done any wrong.

The claimant felt that there was a change in the way that she was being treated. She felt that she was being watched. She felt that she was being followed and that “everything was being double checked on orders”. The claimant was asked to see if the staff had set the parameters on the machines and that was also being checked. The staff were “looking” to the claimant for answers but going to ML “with questions that I should have got”. The claimant felt that she was clinical manager in name only. The claimant did not feel that she could discuss the situation with ML. There was a grievance procedure but she did not refer to it. There was no one there that she could talk to. She therefore resigned.

The claimant’s letter of resignation dated 11th April 2008 and addressed to ML was opened to the Tribunal:

“ I am hereby advising and confirming my resignation from the company and giving you notice of six weeks from today of my termination of service.

My resignation is with regret, however this has been brought about by circumstances that I personally feel has made my position untenable within the company. For your records, some of the circumstances are as follows: -

Allegation of mismanagement of Patient Care Concerning Critical lab Values

- Whilst I was on annual leave an incident occurred involving the unit staff
- Subsequently I was contacted by you (19/03/08) and advised that I had two choices

- 1) Resign and be given a reference 2) Be suspended by the company and following an investigation, be dismissed with no chance of a reference
- Later that same day I was again contacted by you and advised that the company had suspended me
 - You referred to the charge against me as, “*gross misconduct*”, however when I queried this you rephrased the charge to “*gross mismanagement*”. You did not provide any further explanation of the charge during this call.
 - Later that day I received an email from the HR, which stated the “*allegation of mismanagement of patient care concerning critical lab values*”. It also mentioned that a “*disciplinary interview, which will be arranged and confirmed to you in the next few days*”.
 - The first elaboration of the charge of “*gross mismanagement*” came in a letter from HR dated 2nd April, where it stated “*between the dates of 22nd February and 26th February 2008 there were seven patients that the Dublin clinic received critically high potassium levels for. Company policy was not followed on two counts, firstly, the results were not escalated in the appropriate paperwork*”

Investigation of the Allegation

- I went on suspension completely bewildered as to what I had done wrong. I received no communication from my employer until 2nd April at which time I was invited to an informal investigatory meeting.
- The letter I received was extremely distressing. It contained statements such as “*I am sure you appreciate that the allegations that the company has been dealing with of, mismanagement of patient care concerning critical lab values, is very serious and could have resulted in a fatality*”,... “*Company policy was not followed on two counts, firstly, the results were not escalated in the appropriate manner and secondly, the results were not recorded in the appropriate paperwork*”... “*As mentioned previously a consequence of this error could have been a patient death*”
- In response to queries from my solicitor I was informed that this meeting would be part of the disciplinary process.
- I attended a meeting with (SW) on 7th April. I received no information in advance of this meeting.
- The letter from HR 2nd April had stated that “*Therefore, the investigation has had to be thorough and as a consequence has taken two weeks up to now*”.
- During the meeting, (SW) informed me that she had interviewed none of the staff as part of this investigation.
- The evidence presented to me was minimal and contained no substance to support the allegation against me. After nearly three weeks of investigation the only evidence of substance provided to me was was a ‘Summary of discussions with nursing staff on 10th March 2008’, that had been conducted by you. The ‘Summary’ contained absolutely NO suggestion of wrong doing on my part, however I was still subsequently suspended on 19th March 2008.
- (SW) decided that I had “no case to answer” and I was immediately reinstated.
- I remain bewildered as to why my employer has taken this course of action against me.
- After meeting with (SW) I called you to say that I would return to work on the Friday 11th April. You however, insisted that I report for duty the following morning, even though I tried to explain that I had been under a lot of stress. You said in an aggressive tone that “We need a clinic manager tomorrow”. I

elt threatened and compelled to return immediately without even a day to relax after the distressing three weeks that I'd had.

My reputation as a professional has suffered severe damage.

- During the investigatory meeting, (SW) informed me that (Prof C) had been advised that I was suspended and she went on to say she had also received a telephone call from (FMcH) (HSE) seeking confirmation as to whether the rumour that I had been “*sacked was true*”.
- I was excluded from a meeting 14th March, involving the company and Beaumont/HSE, to discuss the incident and an action plan.
- The allegation was wrongly brought against me without proper initial consideration of the facts even though it was common knowledge I had not been present at the time of the incident.

Since My Return To Work

- While (SW) has apologised for the distress I have suffered, when I returned to work on 9th April, you were cold and unwelcoming, as opposed to the staff, patients and DC who all expressed their satisfaction and made me feel happy to be back. It was only at an ‘end of day staff group meeting’ that you mentioned ‘welcome back (claimant’s name)’ in a communal way rather than personal.
- After the last two days at work, I have been left with the impression that you hold me responsible for the bloods incident and the unit’s subsequent pressures whilst I was on suspension, even though you are aware that, I was not present at the time of the incident and have since been completely exonerated by SW’s investigation.
- When referring to a meeting with high ranking individuals in Beaumont hospital and HSE, you mentioned that on the matter of my reinstatement you advised them that “(the claimant) is clinical manager but I (ML) am manager”.
- You also mentioned that “TF needed selling” on my reinstatement.
- Following reinstatement, the company has NOT acted in a transparent or formal written way to remove any cloud of doubt over my reputation.
- You have advised me that I have not been invited to a meeting with the company and Beaumont/HSE on the 22nd April 2008, to discuss outstanding clinical matters and issues.

I have been completely exonerated from the charge and reinstated. However:

- My position has been significantly undermined
- It is clear that a cloud of doubt remains over my competence as clinic manager (e.g. “TF needed selling”)
- It is clear that following intervention by my legal representative, the company did a complete U-turn and sought to mend its hand. The very clear steps taken towards my unlawful removal were reconsidered and a clumsy attempt has been made to gloss over that shabby and unlawful way in which I have been treated.

My trust in my employer has been completely eroded as a result of the oppressive and unreasonable way in which it has conducted itself towards me in recent weeks.

My service with the company will terminate at my shift end on 23rd May 2008 and until that time I assure you that AI will continue to carry out my duties in a professional manner and to the best of my ability.
I will correspond again soon to confirm my available annual holiday leave and any outstanding expenses due to me, as I wish these matters to be resolved before the 23rd may 2008.”

The claimant worked her notice period as the staff and patients needed re-assuring and thing needed to settle down. DC told her that he had read he letter of resignation and that she could talk to him at any time. DC did not persuade her to stay. He did not ask her to re-consider. She had a meeting with him in his office. He asked her if she wanted to explain her reasons but she felt that she had explained her reasons well enough.

ML did not discuss it with her that week. A few weeks later ML did ask her if she would do agency cover work until they appointed someone but the claimant told ML that she could not.

The claimant was asked about parts of her resignation letter (below) and if she was of the view that after the investigation she would be dismissed. The claimant replied “very, very clear”.

- “Subsequently I was contacted by you (19/03/08) and advised that I had two choices 1) Resign and be given a reference 2) Be suspended by the company and following an investigation, be dismissed with no chance of a reference”

The claimant explained that she did not feel that she was uncooperative; she felt that she just needed information on the investigations that were carried out. She was not asked to meet (her superiors). When she handed in her resignation, DC did ask her if she needed to talk. If she stayed she did not know what her position would be. She had had a good relationship with ML but after the incident she did not feel there was a relationship after. She felt that she was being kept out of meetings. She felt that she was clinic manager in name only.

The claimant first learned of a problem with the escalating and recording of critically high potassium levels in the blood of seven of the respondent’s patients when she attended a meeting with one of the nephrologists from Beaumont hospital on 10 March. That escalating and recording took place in the clinic between 22 and 26 February. Since the claimant was not present at the clinic during that time she was unable to offer an explanation to that nephrologist for that scenario.

As a result of this mismanagement the claimant as clinic manager was suspended from duty on 19 March pending the outcome of an investigation into this incident. The claimant was the only employee suspended and she felt confident such an investigation would show her non-involvement in that mismanagement, as she had done nothing wrong. Therefore there was no reason for her to resign. By that time, however, other staff members had accepted responsibility for this mismanagement and this together with the regional manager’s comments about resign or be fired gave her the impression she was being blamed by the respondent for something she had no role in. Her reputation was being damaged and to be left “sitting” for almost three weeks for an investigatory meeting only added to her discomfort. That discomfort was added to when she the respondent confirmed in writing that she was to attend an informal disciplinary meeting.

Together with her partner the claimant attended a meeting with the director of clinical services in Dublin on 7 April. She was extremely anxious at that meeting as she felt her career was “going down the pan”. While accepting she did not answer questions put to her that day the claimant

denied she responded with a “no comment” remark. She was furnished with all relevant aspects of the respondent’s investigation and felt better as she agreed to meet the director the next day. When she was told that she had no case to answer the claimant sought the following day off to “collect her thoughts” and to get a proper night’s sleep. That application was refused and the claimant duly reported for work before 07.00 hours on 9 April.

The claimant’s experience and perceptions at work from that day up to her notice of resignation less than seventy two hours later led her to believe she was neither appreciated, valued or indeed fully forgiven by the regional manger for the earlier incident involving the blood readings. Her authority was undermined and some of her responsibilities had been eroded. Prior to her suspension she had always been “on the floor” but upon her return that had been changed as she allocated up to nineteen hours per week on administrative tasks. The claimant also felt she was subjected to a disciplinary procedure which had no validity in this jurisdiction. She accepted however that she attended a one-day course in the United Kingdom relating to the respondent’s grievance procedure but that she had never applied that procedure in this case.

The regional manger appeared cold and distant towards her, refused her the day off and instructed her to wear a uniform while at work despite the fact she was not undertaking clinical tasks that day. The claimant also felt that this manager was excessively checking her work and generally undermining her role as clinic manager. She was “peevd off” at the respondent’s refusal to give her that day off work. The witness felt that her professionalism and competencies were questioned not only by that manager but also by senior health personnel elsewhere. She got that impression from the comments and behaviour of her regional manager. The claimant was also upset at the way a receptionist recruited by her had been treated by the company during her absence.

The witness detailed those reasons and other background information to support her decision to give almost six weeks notice to resign in a letter dated 11 April and addressed to that manager. Her notice was in consideration to the staff and patients, as she did not want to leave them “in the lurch”. Towards the end of those six weeks the respondent offered the claimant the opportunity of doing part time agency work for them. That work never materialised and the claimant has been out of work since her dismissal and up to the conclusion of this hearing.

A former colleague and fellow nurse described the claimant’s work as very professional and said she ran “a tight ship” as clinic manager. The mismanagement of the blood samples occurred during her absence and there was no one in charge of the unit at that time. He added that the claimant had nothing to do with that mismanagement. At that time there were no guidelines or procedures on how to deal with this situation. Later he was one of three staff disciplined for that situation. The witness acknowledged that the respondent had to investigate the circumstances of that mishandling and that it was not practicable that it suspended all staff pending the outcome of an investigation.

It was on 10 March 2008 that “things blew up” as the regional manger spoke to him and his colleagues about this evolving situation. The witness was unaware that these conversations formed part of an investigation and he was not subsequently approached again on it up to the reinstatement of the claimant some three weeks later. This mismanagement of blood samples was in the view of the relevant staff at Beaumont hospital a serious matter. The regional manager clearly stated that due to this situation that the claimant’s head was on the block. Staff morale was very low following the revelation of those results and the claimant’s suspension. The staff were told that the claimant’s suspension was due to gross misconduct. It was felt then that she could have been struck off the register of nurses.

It was the witness's view that the respondent was only paying lip service and performing a public relations exercise in welcoming back the claimant to work following the lifting of her suspension. It was clear she was not the "boss" as the message from the regional manager was that the "buck stops with her". That manager appeared to be "trotting behind" the claimant checking on her work.

The claimant's partner was in her presence and overheard a phone conversation between her and the regional manager concerning this ongoing situation. The witness was shocked to hear that manager give the claimant two choices as regarding her employment. Those choices were either to resign and receive a reference or face suspension, then an investigation followed by a dismissal. No mention was made as to the identify of the person who would conduct such an investigation. By 19 March the claimant was "a wreck" due to the treatment she was receiving from the respondent. The witness confirmed that the director of clinic services made it clear to the claimant on 8 April that she had no case to answer in relation to the earlier mismanagement of patients blood samples.

Respondent's Case:

The respondent company involves itself in nursing care for its patients and residents. Its Dublin clinic that was established in late 2006 has developed a close working relationship with a major north Dublin hospital. That care extends to taking blood samples and sending them for analysis to that hospital. Among the respondent's functions were to tender for work from the Health Service Executive (HSE). In that regard it has to satisfy that organisation and their related institutions that it has the capacity to undertake and provide a professional service to its patients.

The respondent's first witness held the title of a regional manager and was also the claimant's line manager. The claimant was the clinical manager at its Dublin office. Among the staff under her supervision were a number of nurses.

On 10 March 2007 the witness was contacted by a consultant nephrologist who expressed his annoyance at the way a situation developed where high potassium levels in blood samples were recorded for seven of the respondent's patients were handled. The witness regarded this as a very serious issue and when she approached the claimant about this the claimant was unable to offer an explanation. The claimant was on leave when those blood samples were taken and recorded. Apart from speaking to the claimant the witness also briefly interviewed and recorded comments from four nursing staff about this complaint. Those interview notes were sent to a colleague who later conducted an investigatory meeting into the claimant's possible role in this affair. A copy of the nephrologists' concerns about deficiencies in the respondent's conduct in this incident was also forwarded to the company's human resource section.

The witness and claimant spoke on the telephone to each other on 19 March. The witness informed the claimant she was being suspended from duty due to this incident. She also told the Tribunal she had some input into that decision. However, she denied offering the claimant the options of either resigning with a reference or face suspension, then an investigation followed by dismissal. No ultimatums were issued and the witness added it was untrue that she told the claimant that "her head was on the block". It was the claimant who asked about her options and the line manager indicated that her response was in keeping with "trying to be a friend to her".

An investigation by the respondent's director of clinic services into the claimant's role as clinic manager into the mismanagement of blood results found that she had no case to answer. The witness welcomed that finding which was issued on 8 April 2008. She expressed surprise that the claimant had sought the following day off considering her stated concern for the patients and her

staff. The director of clinic services and the witness refused that request. During the claimant's suspension from 19 March to 9 April 2008 the witness "took up the slack" and regarded herself as the interim clinic manager. The claimant's job description included roles in personnel and patient care administration and general responsibilities. The witness concentrated more on the claimant's administrative role during that suspension period.

Neither the respondent nor the claimant's line manager had any intention to remove the claimant from her position and responsibilities. However, the witness felt it would be better that the claimant initially devote more time to administrative duties upon her return to work on 9 April. That entailed a change in hours and times of work for the claimant. While she did not discuss those temporary changes in any detail with the claimant the witness did tell her that such changes were not "set in stone". The witness described the atmosphere in the clinic at that time as not relaxed and added it was a stressful time for all staff mainly due to the uncertainty created by the blood sample mismanagement and its aftermath.

When the line manager noticed the claimant at work on the morning of 9 April she greeted her and also asked that she wear her uniform while at work. The witness openly welcomed the claimant back to work during a staff group meeting later that day. She denied being cold towards her and commented that she was neither following her around the workplace nor overtly checking her work. The witness had no memory of telling the claimant she was not needed at a meeting at Beaumont hospital. It was not normal practice that clinic managers would attend such meetings. The line manager was "really surprised" to have received a long letter dated 11 April 2008 from the claimant giving notice of her resignation effective from 23 May. The claimant wrote: *My trust in my employer has been completely eroded as a result of the oppressive and unreasonable way in which it has conducted itself towards me in recent weeks.*

The witness told the Tribunal that she did not know why the claimant resigned. She referred to the grievance procedure in the company's handbook and remarked that the claimant did not utilise it. In addition the line manager had "an open door policy" and was not approached by the claimant about her grievances apart from the resignation letter. Prior to her notified intention to resign the claimant had indicated her interest in moving as a registered nurse to a proposed Limerick branch of the respondent. During the notified period the claimant declined a part time position at that branch.

The human resource manager was aware that the claimant had been suspended and invited her to an informal investigatory interview on 7 April. That invitation was sent out twice. The first letter was written on 2 April contained some background for such an investigation. The second letter two days later suggested that this interview was also an informal disciplinary meeting. The witness described that phrase as a clerical error. She was not in a position to comment on that interview since she was not present at it. She formally wrote to the claimant on 8 April confirming that she had no case to answer and reminded her of the agreement that she return to work the next day. The witness stated that the respondent was operating under a new company handbook from December 2007 and was therefore not using previous handbooks. In a detailed letter to the claimant dated 15 April the witness clearly stated that the respondent had not dismissed her and added that the company was willing to discuss any aspects of her case with a view to resolving any issues she had with the respondent.

Prior to conducting an investigation into the circumstances of the mishandling of blood samples the director of clinical services spoke to the regional manager about the background to this case. That director was aware of and approved of the claimant's suspension and was satisfied that she has reviewed all aspects of this case before she met the claimant and her partner on 7 April 2008. The

witness accepted that the time gap between the claimant's suspension and this meeting was "unacceptable" and added this was due to other circumstances. However, she was "absolutely shocked" at the claimant's stance and attitude during the course of that meeting.

The claimant was unwilling to discuss or give her account of what happened in the unit around the time of this mishandling of the blood samples. Her "no comment" remark was based on legal advice. Due to the urging of the witness the claimant re-considered her approach to this meeting and in that context the two women met again the following morning. This time the claimant did address this issue and as a consequence the witness was able to lift her suspension and exonerate her from any wrongdoing on her part concerning those samples. The director also apologised to her for any distress caused due to that suspension but insisted that suspension and investigation was necessary to protect patient safety. The witness declined the claimant request to take the next day off on the grounds that there was a lot of work to be done in the clinic. The meeting concluded when the witness assured the claimant that a very clear message would be sent to all relevant parties that the claimant had no case to answer.

The general manager attended meetings with the Health Service Executive and emphasised how important that relationship was to the respondent. He felt that a factor contributing to the claimant's suspension was to apprise the HSE that the respondent was attending to that incident subsequent to the claimant's exoneration into the blood samples scenario he reassured that organisation and a senior health service worker that the respondent would not allow such a mishandling again. The relevant bodies were satisfied with that reassurance and a "line was drawn under the claimant's case". Such a meeting did not require the presence of the claimant as clinic managers met hospital personnel approximately every three months.

The witness told the claimant that she had his full support when she recommenced her duties in April. The claimant was very patient oriented. He also informed the staff of her return and added she was welcomed back. The claimant did not make him aware of her discomfort at any aspects of her employment at that time. The witness received an email from the regional manger dated 9 April, which outlined new working hours for the clinic manager. The contents of that email were not discussed between the witness and the claimant. Following his sighting of the claimant's resignation letter he indicated to her that he was available to discuss her concerns and conditions of employment. He felt that she had "shot her bolt" too early in reference to that decision. Earlier she had approached him about a possible move to another proposed clinic in the Shannon region.

Determination

The claimant is alleging that she was constructively dismissed from her employment. The burden of proof lies with the claimant to show that the dismissal was not voluntary but rather was brought about by the conduct of the respondent.

The Tribunal are satisfied based on the evidence produced during the hearing of the matter that the respondent's decision to suspend the claimant on the 19th March, 2008 was a completely inappropriate and disproportionate course of action to take in light of the fact that the claimant was on annual leave when the events in relation to the high potassium blood results took place. This view is compounded by the fact that none of the employees who had participated in the high potassium blood results event were investigated, disciplined or suspended. Whilst the claimant was the unit manager and had responsibility for not only the running of the unit but those who worked in it she should not have been held responsible for a specific event that took place during her annual leave. The respondent's management of the event was seriously flawed.

The respondent's investigation of the event was totally inadequate. It is clear from the evidence that the respondent felt they needed to be seen to be doing something by a Professor at Beaumont Hospital and the Health Service Executive. They were obviously fearful of the potential catastrophic consequences for their business if they lost the contract with Beaumont Hospital. It was this fear that was the driving force behind their decision to suspend the claimant. The respondent during the two day hearing accepted no responsibility for the events that took place despite the fact that there were absolutely no written procedures or protocols in place for staff to follow in the event that potentially life threatening blood results were returned from the lab. It is incredible that despite the fact that the respondent suspended the claimant for alleged "mismanagement of patient care concerning critical lab value" and placed such emphasis on the risks involved in not following a certain course of practice they, to date, have not implemented a written procedure or protocol for staff to follow should such an event reoccur. They continue to rely on the hope that staff will follow "common practice" should the event ever occur again. Taking into account the potentially life threatening consequence to their patients health and wellbeing this is simply not good enough.

The result of the suspension was to place the claimant in a very worrying and insecure position. She was left in this state from the 19th March 2008 to the 8th April. There was no satisfactory explanation as to why the claimant was left suspended for such a lengthy period of time. The formal investigatory meeting took place on the 7th and 8th April 2008 after which investigations officer; SW concluded that the claimant had no case to answer. She was asked to return to work on the 9th April 2008.

The claimant returned to work on the 9th April 2008. She became very disheartened as the day when on. She was of the view that her reputation had been damaged due to the suspension and was hopeful that on her return her direct boss, ML would have announced to all the staff that she had been cleared of all allegations and welcomed her back in an appropriate manner taking into account what the respondent had put her through. This did not happen until the end of the day and even then the "welcome back" was half hearted. She found ML cold and unwelcoming. Over the following two days the claimant was of the view that her authority was being undermined by ML, she was being frozen out of many of her contract duties by ML and that ML still held her accountable for the events in February. This allegation was refuted by the respondent.

The claimant's allocation of hours worked was unilaterally changed. Following her return she was to spend twenty hours per week with the patients and the remainder on administrative duties. The respondent stated this was done to facilitate the claimant and to reduce the risk of the events in February happening again. The claimant was of the view that it was done to undermine her and to make the carrying out of all her contractual duties very difficult. The claimant resigned on the 11th April 2008. The claimant did not attempt to adopt the company's grievance procedure in relation to her issues regarding ML's treatment of her. The company's procedure clearly sets out that "*If any individual feels that they have been discriminated against for any reason, they should raise their concerns with the persons responsible. The purpose being to give an opportunity to rectify the matter. 2. Should an individual feel that the matter has not been resolved to their satisfaction, then the Company's grievance procedure should be utilised*". It was open to her to do so and she chosen not to. It was also open to her to discuss the matter with DC, which whom she had a good relationship and when invited by DC to discuss the matter she declined.

The first of two legal tests the Tribunal must apply is, it must be satisfied that the claimant proved that the respondent fundamentally breached a significant term of her contract of employment. The

only part of the claimant's working conditions that actually changed was the time allocated to each of her duties. Her actual hours of work did not change. Her place of work did not change. Her position did not change. Her contractual duties and obligations did not change. The Tribunal is of the view that the claimant may have needed some time to readjust to the new time allocation put on her duties but would have been perfectly capable of carrying out all of her contractual duties in a competent manner had she given it a chance.

The claimant gave evidence that her role as manager was being undermined by ML and she gave several examples of that. Those examples ranged from being cut out of unit meetings to staff being told to refer to ML with unit issues and not to the claimant. The Tribunal are satisfied that on the balance of probabilities the claimant's version of events is the correct one. However, having considered all of the evidence produced at the hearing the Tribunal conclude ML's behaviour towards the claimant and her attempts to undermine the claimant did not go far enough to allow the Tribunal in law to conclude there was a breach of a significant term to the claimant's contract.

The second test to be applied is that the Tribunal must be satisfied that the claimant's decision to resign before invoking the company's grievance procedure was reasonable in all of the circumstances.

The claimant must have returned to work on the 9th April 2008 in a very different frame of mind to the one she had before she was suspended. Even though the respondent stated to the claimant the act of suspension was neutral act, in reality the fact of her suspension must have been a negative issue that crossed the minds of her work colleagues and superiors. The Tribunal is of the view that the claimant is correct in stating that she was worried about her reputation and the negative impact the suspension did have and would have on it. It had been accepted by the respondent that the claimant had no case to answer and that she was cleared of any wrongdoing. The steps the respondent took following her return to work to alleviate the claimant's concerns in relation to potential damage to her reputation were limited. The steps the respondent took to welcome the claimant back following her suspension were also very limited.

The claimant during the 9th, 10th and 11th of April felt her role as unit manager was being undermined by ML. It was ML's behaviour towards the claimant that was "the straw that broke the camel's back" and lead her to hand in her letter of resignation. She refused to invoke the company's grievance procedure and refused to discuss the matter with DC. The Tribunal are satisfied based on all the evidence that had the claimant either invoked the company's grievance procedure or spoke to DC about her concerns, the matter would have been resolved in time. The Tribunal are also of the view that the claimant did not allow enough time to pass to firmly establish whether or not ML's behaviour was actually as detrimental to the claimant employment future with the respondent company as she, at the time, believed it to be or whether it was exaggerated in the claimant's mind due to the events that had taken place in the three weeks immediately prior. The claimant took no action whatsoever to resolve the issues she had regarding ML's treatment of her and allowed no time to pass to establish whether in the weeks ahead things would return to normal.

Whilst the Tribunal have great sympathy for the claimant it finds that the claim must fail under the Unfair Dismissals Acts, 1977 to 2001.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 does not apply in this case and is therefore dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)