

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD824/2008

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. P. McGrath BL

Members: Mr. J. Goulding
Mr. J. Moore

heard this claim at Dundalk on 4th December 2008 and on 27th February 2009.

Representation:

Claimant: Tom O'Dwyer, SIPTU, Liberty Hall, Dublin 1

Respondent: Mr. Paul Fogarty BL instructed by Mr. Michael Kavanagh of LK Shields,
Solicitors, 39/40 Upper Mount Street, Dublin 2

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant gave evidence. She started work in the respondent's premises in Balbriggan in November 2000. She moved to Skerries as shop manager, she was told she would be there for 6 to 8 weeks. The Skerries shop was quiet so it was ideal for training new staff. Most trainees progressed well.

One particular trainee was not suitable for the job. She was disrespectful to customers and was not dependable. The claimant spoke to the District Support Manager (DSM) about the trainee. The DSM and the Operations Manager (OM) met with the trainee. The trainee complained that the claimant bullied her.

The claimant was upset that a person she had tried to guide reacted against her like this. The trainee was let go after an assessment of her work. The claimant felt that the respondent did not support her. There were two other occasions where the claimant felt that senior management did not support her when she was dealing with difficulties.

After a period of sick leave the claimant returned to work at another of the respondent's premises. In December 07 a new manager was appointed to the shop. The claimant took a day off on Sunday 9th December 07, the new manager's first day at the shop. When she came to work on Monday several customers complained about the new manager, who was not present that day. The claimant

felt that she could not accept the attitude of the new manager to the customers. The claimant felt unable to work alongside the new manager.

The claimant spoke to the DSM on the Tuesday. He offered to redeploy her. This offer was not accepted by the claimant because the DSM could not guarantee she would never again work with the new manager. The claimant felt that she had no option but to resign. She could not carry the new manager. She also felt that her health would suffer if she continued working under these circumstances.

She did not invoke the company grievance procedure. After she tendered her resignation she contacted her union. The claimant and her union representative met with the HR manager and the DSM on 6 March 08 to discuss her situation. The meeting did not resolve her position. In cross-examination the claimant stated that she had no personal grievance with the new manager.

Respondent's Case:

DSM gave evidence that he became aware of the claimant's issues when she phoned him on Monday 10th December 2007 to give her notice of termination of her employment. DSM was surprised and asked her to reconsider, but she said her mind wouldn't be changed. She said she had reservations about working with the new manager. DSM had no issues with the new manager's work and had not received complaints about her before or since. The claimant asked if she could finish that Thursday, which DSM cleared with OM.

DSM met the claimant the next day, Tuesday 11th December 2007 and told her that he was sorry to lose her and asked her to reconsider, but she wouldn't. The claimant said she had received five or six complaints about the new manager on Monday. DSM asked the claimant for specific complaints so he could follow them up, but the claimant didn't have contact details for them. One of the customers was in the shop, he said that there had been a couple of times when there was a delay getting bets on at the counter on the Sunday. The claimant said the other complaints had been similar, though DSM could not follow these up.

DSM offered to redeploy the claimant to another shop, but he couldn't guarantee that she would never work with the new manager again, as occasionally cover was provided between shops. The claimant said that she couldn't have her health jeopardised by working with the new manager.

OM gave evidence that he became aware of the claimant's issues when DSM phoned him on Monday 10th December 2007. He met the claimant on 18th December 2007 in Balbriggan. The claimant was disappointed that the new manager had gone for the job and that she, the claimant, had been let down on previous issues. He offered to redeploy the claimant, but she didn't want that. OM couldn't promise that the claimant would never work with the new manager again. OM didn't want to lose the claimant and tried to keep her in the company.

Determination

The Tribunal has carefully considered the evidence adduced in the course of this two-day hearing. Whilst the Tribunal acknowledges that it has scope to consider a series of actions of the employer which cumulatively might give rise to a constructive dismissal situation, the Tribunal nevertheless cannot accept that there is a nexus between various incidents that occurred in 2003 and 2004, and the employee's decision to hand in her resignation on or about the 11th December 2007.

The Tribunal has great sympathy for this employee who, on her own evidence, admitted that she had suffered bereavements, which had greatly effected her own self confidence and strength.

In the case of 2007 there is no doubt that the employee was disappointed by not being appointed as the senior manager at the shop she worked in although she had interviewed for the position and had every reason to believe she could have some success.

The employee had met the newly appointed manager in the past and had not particularly cared for her managerial style. This was a personal view and there is no question of this new manager having ever been anything other than an extremely satisfactory employee from the employer's point of view.

As it happened, the employee was not rostered with the new manager on her first day as senior manager at the shop. The employee was rostered on for the next day, a Monday, which was the new manager's day off. In the course of this Monday the employee was addressed by a number of regular customers that they were not satisfied with the new manager's style and attitude.

At this point the employee considered her position and her continued employment with the employer company. The employee predicted that there was going to be 'friction' with the newly appointed manager and that she, the employee, would be caught in an incredibly difficult position trying to keep manager, employer and customer happy, and more importantly that the finger of blame would be pointed at her whenever things went wrong in the shop. In view of this belief, the employee handed in her notice.

Under the Unfair Dismissals legislation the onus rests with the employee to demonstrate that, taking an objective view of her circumstances, she was left with no option other than to hand in her resignation and consider herself constructively dismissed, and further that the relationship of confidence and trust between employer and employee is irreparably breached.

The Tribunal does not find that the employee has discharged the burden of proof. The employee did not demonstrate that the employer had acted unreasonably, and indeed, the evidence is that the employer tried to redeploy the employee to accommodate her desire not to work with the new manager.

In her evidence the employee went to great lengths to say she had no grievance with the new manager, but just believed that to continue to work with her might give rise to health issues. The employee's argument lacked coherence and certainly did not justify a resignation without at least trying to negotiate alternative arrangements. Therefore, the claim under the Unfair Dismissals Acts, 1977-2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)