

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
Employee

CASE NO.  
UD1097/2008

against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms O Brennan BL

Members: Ms A Gaule  
Ms E Brezina

heard this claim at Dublin on 20th February 2009

Representation:

Claimant: Mr Pat O'Brien BL, instructed by:  
Mr Tony Hughes  
O'Neill Quinn & Co., Solicitors,  
Grange Cross, Ballyfermot, Dublin 10

Respondent: Mr John Brennan BL, instructed by:  
Mr Raymond Noone,  
Kelly Noone & Co., Solicitors,  
Taney Hall, Eglinton Terrace, Dundrum, Dublin 14

The determination of the Tribunal was as follows:

Claimant's Case:

The claimant was employed by the respondent company as an office administrator for eight years until her departure, as the result of an argument with owner of the company (OC), on 27<sup>th</sup> August 2008. The claimant contended that she was constructively dismissed due to the behaviour of OC towards her. Previously, at a meeting on 18th July 2008, OC told the claimant that her job was gone due to a downturn in business, and that he was halving her hours. OC wanted the claimant to work five mornings, but this didn't suit her and he later agreed to two and a half days per week. The claimant took offence to OC's implication that she didn't need the money.

On one occasion the claimant found a post-it on her desk from OC asking why a cheque had not been posted and 'what else was wrong?' The claimant queried OC about the note and he

replied: 'Do you want f\*\*king please and thank you?' The claimant said that she did. On another occasion OC shouted at the claimant over an invoicing error. The claimant felt afraid of him on this occasion. The claimant agreed that this behaviour was out of character for OC and that she had never had any problem with him prior to 18<sup>th</sup> July 2008. The claimant sought payslips from OC, but she never received any.

On 27<sup>th</sup> August 2008 the claimant was in her office when OC came to ask if she had looked at a telephone bill that he'd left on her desk. The claimant hadn't had time to as she was issuing invoices. He accused her of robbing him and threw the telephone bill at her. She denied saying 'Sowhat' to OC when asked about the telephone bill. The claimant was afraid of OC on that occasion and asked him to get out of the way so she could leave, OC waved his arm and said: 'There's your f\*\*king exit.' The claimant left and did not return. She did not reply to the text message she received from OC later. OC had never spoken to her before about making private telephone calls, and if he had, she would have stopped.

The claimant had never been reprimanded for being late or given any disciplinary warnings regarding the standard of her work. The claimant could only recall one complaint made about her by a customer. The claimant disputed the claim that she spent time on social networking sites and believed that someone else was using her name as a username on one such site.

The claimant was unable to use the new accounting system and had given that task back to OC. She had only received one hour of training on the system, but agreed there was telephone support. Her role was to upload cheques to the system and she didn't recall cheques not being lodged.

#### Respondent's Case:

Due to financial pressure OC had to reduce the hours of the two employees in the company. OC contended that the claimant had left her employment and was not dismissed. He had always found the claimant to be honest and trustworthy, but from 2006 on her work had become sloppy and he had received complaints from customers about the claimant's rudeness.

OC arranged invoice financing with a new bank, but the claimant wasn't able to use the system so OC did it himself. The claimant's task was to lodge cheques to the correct accounts, however, he noticed problems regarding cheques going to the wrong accounts and had brought this to her attention. Regarding payslips, the claimant ran the office and had the support of an independent accountant. OC refuted that the claimant had ever asked him for a payslip.

OC denied telling the claimant that her job was gone. He told her that he had to reduce her hours, and those of the other company employee. She was shocked and the following day asked if she could work two and half days instead of five mornings, which OC agreed to. OC couldn't recall saying 'do you want f\*\*king please and thank you?' to the claimant regarding a post-it left on her desk.

In an effort to reduce costs OC changed telephone providers and in the process had examined the telephone bill. He found that the claimant was spending a large amount of time making telephone calls and on the Internet on social networking sites. He left the telephone bill on the claimant's desk for her to identify who she was calling. He asked the claimant about it the following morning. The claimant said 'some are mine so what?'. He denied accusing her of stealing from him; but rather that the amount of calls she was making effectively meant she was robbing from the company. OC denied throwing the telephone bill at her. The claimant then stormed off. OC stated

that the office was very small, but that he wasn't blocking her path, he couldn't recall saying 'there's your exit'. OC was annoyed that the claimant thought it was okay to spend half a week every two months on private calls. OC agreed that he had used bad language, but this had been a one-off.

OC sent a text to the claimant later that day to say that he didn't want bad feeling between them and that they should speak calmly about the situation, but he never received a reply.

Determination:

Upon hearing both sides, the Tribunal favours the testimony of the respondent. The claimant's behaviour in relation to her usage of the telephone facilities for her own personal use was excessive, to say the least. The claimant admitted that this situation had been continuing, albeit unknown to the respondent, for some time.

The claimant's subjective fear of the respondent's conduct on 27<sup>th</sup> August 2008 is not supported by the objective facts. The claimant did not respond at any time to the respondent's conciliatory text following her departure from the respondent's premises on 27<sup>th</sup> August 2008. In these circumstances the claimant's claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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