

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD1222/2008

Against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr M. Kennedy  
Mr S. O'Donnell

heard this claim at Dublin on 5th February and 24th April 2009

#### **Representation:**

Claimant: Mr. Noel O'Hanrahan, O'Hanrahan Lally, Solicitors,  
Dublin Law Chambers, 77 Talbot Street, Dublin 1

Respondent: Mr Kevin D'Arcy B L instructed by  
O'Regan Little, Solicitors, 7 Winetavern Street, Dublin 8

The determination of the Tribunal was as follows:

#### **Preliminary Issue**

Having considered the two preliminary issues over time limits and retirement age limitations the Tribunal finds it has jurisdiction to hear this case.

#### **Claimant's Case**

The claimant commenced employment with the respondent as an office administrator in 2006. She "got on extremely well" there and there was mutual respect between her and the principal of the firm. There was hardly a transaction in the office that she was unaware of. The claimant indicated she was a competent and loyal employee who approached her work in a professional manner. The claimant was invited to be a director of the respondent but she declined. The relationship deteriorated sharply in August 2007 when that principal introduced the use of spreadsheets into the office procedure. The claimant had neither experience nor any training in the appropriate computer application and struggled to operate that system. Her frustration at her inability to operate that system was compounded by the attitude of the principal. He began to question her mental capacity

to undertake her work and generally treated her in a belittling and insulting way. As a result of that treatment the witness “walked out” on the respondent in October 2007 and required medical attention due to the situation at work. Up to then she had only been absent one day through illness since her commencement of employment with this employer.

As a result of a meeting with the principal following this walkout she recommenced her work there. The principal had apologised for his behaviour and added such behaviour would not be repeated. Shortly after this the claimant suffered a non-work related health problem and had to be hospitalised abroad. Her recovery was completed by the end of December 2007 and she returned to work. She said it was not correct that the principal attempted to pay her during this absence and that she declined such payment. She was paid holiday pay while out sick, as she had not taken her holiday entitlement. “Everything was okay for a few days” until the issue of the spreadsheets was again introduced. The witness undertook some outside instruction in that application “but did not learn an awful lot”. The principal showed her on one occasion how to operate that system but she found his methodology unhelpful. He again referred to her intellectual ability in an abusive way. When she told her manager about this ongoing issue he in turn arranged for a relative to coach her on the use of spreadsheets. She was not aware at the time that the principal paid for that tuition. References were also made to a formal FAS course related to this issue.

In late March 2008 the claimant was again subjected to very abusive language from the principal in relation to her work. On that occasion the claimant was told to “shut her mouth”. She decided that she could no longer work for him and therefore left her employment. The witness commented that her health was more important than her job. The claimant was also upset at the way a company cheque was handled and the implication that she was at fault for this. The claimant was not furnished with a contract of employment and was therefore deprived of a grievance procedure. The claimant told the principal between January and March 2008 that he was bullying her and he said to her “don’t ever call me a bully”. The principal telephoned her and asked to meet him. She asked him for her P45 and any wages that were due to her. When she met the principal subsequent to her departure from the company he presented her with a P45 and additional payments. He did not offer to “sort out the situation” and indeed remarked that it was the end of an era.

## **Respondent’s Case**

The principal told the Tribunal that he had a very good relationship with the claimant for a number of years. The claimant was one of the longest serving employees in the company. He did not have the same relationship with any other employee. The claimant was familiar with the work that was undertaken in the respondent. They had breakfast together regularly and discussed work. It was normal for them to have arguments concerning work. The claimant was invited to be a director of the respondent in 2007 but she declined. The claimant left her employment on a couple of occasions but she always returned. The claimant undertook manual calculations in a handwritten journal and she spent a considerable time doing this. The principal transferred the claimant’s journal to a software package and the calculations were automatically calculated. He did not know what annual holidays claimant took and he told her to keep a record of her holidays and he trusted her. He disagreed that the relationship between him and the claimant deteriorated from September 2007 onwards. The claimant was ill in Amsterdam in October 2007 and he was in communication with her at this time. He told her if she needed money to contact him. The claimant returned to work in January 2008 and she had difficulty with the spreadsheets. The claimant had to enter figures in a spreadsheet and he assisted her in doing this. If the claimant had a problem she could address the matter with him. The claimant would say to him “you think I’m stupid”. He told her if he did not think that she was competent that he would not waste his time showing her how to use

the spreadsheet. He suggested to the claimant that she attend an external course in Excel on a one to one basis. They had arguments in the office and the claimant never told him that she was being bullied and harassed by him. He relayed an argument that he and the claimant had over a cheque and he told the claimant to “shut the f... up”. The claimant told him that she was not tolerating this and he had heard this before. After that the claimant did not return to work. Initially he did not do anything about this and he telephoned her and she did not return his call. He wanted to find out exactly what she wanted and he was happy for her to return to the respondent company. He felt that the claimant had not been well. He did not have anyone to undertake accounts. He agreed to meet the claimant and the claimant asked him to bring a P45 and he gave her an extra month’s pay.

**Determination**

The claimant and the respondent had an unusual relationship and most of the time it was a good one, sometimes it was otherwise but they managed to overcome their difficulties. There was some deterioration from September 2007 following the introduction of a new software system. Attempts were made to resolve the claimant’s difficulties with the software system, however these efforts were frustrated by an incident on 27 March 2008 when a heated exchange took place between the parties. The claimant left her employment.

The obligation was on the claimant to prove that she had no other option but to leave her employment. On the evidence before it, the Tribunal does not accept that she had no other option. Therefore, the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

