

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

-Claimant

UD934/2008

against

Employer

-Respondent

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr D. Hegarty  
Mr D. McEvoy

heard this claim at Cork on 18th February 2009 and 7th April 2009

#### **Representation:**

Claimant: Mr Eamonn Carroll, Noonan Linehan Carroll Coffey, Solicitors,  
54 North Main Street, Cork

Respondent: Ms. Antoinette Vahey & Mr Fergus Long, Ronan Daly Jermyn, Solicitors,  
12 South Mall, Cork

#### **The determination of the Tribunal was as follows:**

##### Respondent's Case:

The CEO of the respondent gave evidence to the Tribunal. The respondent is a not for profit youth organisation which has a complex funding structure. Conditions attached to funding does not allow for fluidity of funds throughout the organisation. The respondent has nineteen community-based projects; each of which has a separate management board. The respondent must get the approval of those funding the projects to relocate staff.

In 2000 and 2001 approval was given by the government for a project, which involved a range of preventative measures for young people at risk in relation to alcohol and drugs. The respondent provided support to this project. The claimant was employed initially on this project to cover maternity leave but in 2003 he was offered the role of youth officer on a twelve-month renewable

contract subject to funding from the local drugs task force.

In 2006 the claimant raised a number of issues with the CEO. The claimant outlined his ongoing frustrations with the project, the suitability of the premises and ongoing health and safety issues. There were also tensions in the interpersonal relationship between the claimant and his line manager. The CEO conducted a meeting with the claimant and his line manager. The CEO believed that the issues were resolved at this meeting. However, he “left the door open” for both the claimant and the manager to return to him about these matters but neither of them contacted the CEO for the remainder of 2006.

On the 12<sup>th</sup> September 2007 the claimant tendered his resignation stating that he was “*unable to work in the current practice which operates within the organisation.*” The claimant also stated that he had ongoing issues with his line manager, which had not been dealt with. On the 17<sup>th</sup> September 2007 the claimant withdrew his resignation stating that he had submitted this resignation under duress. The claimant also submitted a medical report. The CEO wanted to clarify the situation and he requested the claimant to attend for an independent medical assessment.

The claimant attended for the independent medical assessment on the 9<sup>th</sup> October 2007. The doctor’s report stated that the claimant was medically fit to return to work and was willing to return. The report further stated, “*A resolution of the work-related difficulties is needed before a successful return to work is likely.*” The claimant’s own doctor at that time continued to certify the claimant as medically unfit for work.

The CEO wrote to the claimant on the 23<sup>rd</sup> October 2007, suggesting a meeting on the 6<sup>th</sup> November 2007 to discuss the contents of the independent medical report and to discuss a number of other issues that the respondent had about how the claimant was performing his duties. The letter also stated the meeting was not of a disciplinary nature.

The meeting was held as planned on the 6<sup>th</sup> November 2007. Subsequent correspondence ensued between the parties after this meeting. In a letter written to the claimant and dated the 3<sup>rd</sup> December 2007 the CEO stated,

*“It seems to me that the appropriate way to have those grievances addressed at this stage is to refer the matter to a third party, who has not been involved to date, for the purpose of investigating your grievances in an effort to find a suitable resolution.”*

It was agreed that a member of the Board (TK) would conduct an independent investigation into the claimant’s grievances.

On the 14<sup>th</sup> December 2007 the claimant wrote to the CEO stating that his doctor had certified him fit to return to work due to the fact that his grievances would be investigated. The CEO wrote to the claimant in letter dated the 11<sup>th</sup> January 2008 following a discussion at the request of the claimant, concerning his annual leave entitlements. The project the claimant worked on had not re-opened in 2008 due to a number of issues including problems with the premises that had arisen during December 2007. There were also issues with the management committee who refused to meet with the respondent. The working relationship with the project had deteriorated. In light of these issues, and because no redeployment options were available, the claimant was not required to present for work until further notice but he continued to be paid.

TK’s report was issued in January 2008. The report contained a summary of the report’s findings.

The report found that there was no indication that the claimant was being treated any differently to any of the respondent's other employees.

After the CEO received the report he asked the claimant to attend an investigative meeting in February 2008 to explore a range of issues. The letter stated that the meeting was not of a disciplinary nature. Correspondence ensued between the parties following this meeting and a further meeting to finalise matters was arranged for the 3<sup>rd</sup> March 2008.

On the 14<sup>th</sup> March 2008 the CEO wrote to the claimant stating that it had been decided subsequent to the investigative meetings to call the claimant to a disciplinary hearing to address the matters further and to decide whether or not a disciplinary sanction was appropriate. The letter further stated that this decision was overtaken by events relating to the project on which the claimant was employed. A decision had been taken by the respondent to withdraw its services from the project. The decision was taken for business reasons and in circumstances where the working relationship between the respondent and the management committee of the project had become untenable. The relationship with the project had deteriorated and there was no re-engagement. A request to freeze the funds for the project was made in February 2008. The CEO attempted a number of times to meet with the management committee for the project but this request was refused. The CEO was frustrated in his efforts to arrange a meeting and there were not many options available to address matters. Most reluctantly the respondent withdrew its services from the project as the relationship had fractured.

This decision impacted on the claimant as he was employed solely for the purpose of providing services to the project. As the respondent was no longer responsible for the project the claimant's position had become redundant. Consideration was given to whether or not there were any suitable alternatives but at that time redeployment was not an option as the funding was received on a project-by-project basis. An RP50 and redundancy payment was provided to the claimant and he was paid in lieu of notice.

During February 2008 the CEO circulated a memo concerning appointments and vacancies within the organisation. The claimant could not be automatically offered these alternatives, as no mechanism is in place to move staff from taskforce to taskforce. The claimant applied for the vacant positions but was not short listed for either.

During cross-examination it was put to the CEO that the respondent had total responsibility as the respondent's employer. The CEO replied that the respondent was accountable for the responsibilities and duties of the claimant's work but the respondent did not exist in a vacuum in that regard.

The CEO was asked what steps he had taken to address the medical assessor's report, which stated that there was a complete breakdown in trust between the claimant and his manager. The CEO replied that at that time he did not take any steps to address matters as the claimant's doctor was still certifying him as unfit to return to work.

It was put to the CEO that at the meeting of the 6<sup>th</sup> November 2007 the claimant was surprised to find that his manager was in attendance at the meeting. The CEO believed it was right to have the claimant's manager present as the claimant had raised an issue about his manager.

On the second day of hearing the CEO said that TK was given no brief on how to conduct his

investigation but he did so under the organisation's dispute and grievance procedure. TK's role was to identify what issues were real in relation to the claimant's complaints, he was not conducting a disciplinary procedure. He said that TK's report brought some clarity to the issues raised, including the problems between the claimant's line manager and the claimant. The report found no evidence that the claimant was being picked on. A reference by the claimant to bullying was only made in his letter of resignation, and nothing was specified in this allegation.

A further investigative process was begun in January 2008 and a meeting was held with himself, the claimant's line manager and the claimant. The claimant objected to his line manager being in attendance, but only after 45 minutes. On 10 January 2008 he told the claimant not to go back to work because the premises was not suitable, there was an absence of service provision, and the engagement process with the project Management group was very fragmented. He said that the Management committee became very frustrated at the lack of service provided by the organisation, although they did provide a temporary service. He told the claimant not to return for the reasons already outlined, and he did not return to work.

He said that it was not sustainable long term to pay the claimant from the cash flow as there was no funding for it. They hoped that the project Management Committee would engage with them, but they failed to do so. They couldn't achieve a shared vision, and there was uncertainty as to what was required to keep the project going. A second worker was not approved, nor was funding secured. It wasn't suitable for the claimant to work in their office, as it was an administrative base, and there was no other option.

Meeting of 14 February 2008 – 4 points were used as basis for disciplinary procedure. The concern was that the Management Committee was informed about his resignation and he had made allegations against the respondent, but he couldn't produce a copy of this. The reputational damage done to them could have been massive because he had sent the letter to the Committee before them. As soon as the claimant raised issues with them, they were referred to TK. He said that his door was always open, but that nothing was put before him. There was confusion over the withdrawal of the claimant's resignation so he referred this to TK also. The claimant could not be re-deployed as there were no suitable vacancies, and the funders decide where the workers could go.

It was self-evident that they had lost the confidence of the local committee because they would not engage with them. There was no tangible support from the funder so the decision was taken to withdraw the service. They were not reimbursed for the redundancy paid to the claimant, or the management fee, so the decision was not taken lightly. He said that they did not give the claimant a reference as it was not the organisation's policy to do so. He agreed that it was a huge step to remove the service. It was always a boundary issue as to who was in charge. A service agreement never came into being as there was a lack of agreement which led to the break up in 2008.

The claimant's Line Manager (FOC) gave evidence that he had an involvement with the project since 1996. He communicated verbally for the most part with the chairperson of the Management committee, they had infrequent meetings due to the unavailability of people to attend. He said that nitty gritty issues would arise occasionally between himself and the claimant, and if they failed to resolve them they could seek recourse to the CEO. Some of the people on the management committee would interfere with the employer/employee role. He knew most of the Management group and had a good relationship with them, but this deteriorated in 2007. The first sign of this was when meetings were held without his input, and he alerted the CEO about it.

When the claimant resigned in September 2007 they sourced someone else to provide an interim

service, but the Management group were not satisfied with this because the person was only part-time.

He said that when TK's report had said that the claimant had problems with the CEO and his line manager he was referring to issues that had been resolved a long time previously. He said that he could not understand how the claimant could say that he had undermined the claimant's work by his constant bullying. He did not know what prompted the claimant's resignation and there was no warning of it. The relationship deteriorated with the project group because of the lack of service, and because the claimant was out sick. He accepted that the claimant had a good relationship with the project group. He said that he disengaged from the youth project at the turn of the year in 2007/2008.

The non-executive chairperson of the Board (AOD) gave evidence that he was not involved in the day-to-day activities of the organisation, but was aware of the difficulties that arose. He said that they had never withdrawn from a project before, and that the decision was made with great regret. They felt the need to take this decision around 12 March 2008 after a request had been made to the Drugs Task Force to freeze their funds. When they pulled out of the project, the claimant's position became redundant. He asked the CEO could he be re-deployed, but this was not possible.

He said that he was aware that the claimant had tendered his resignation, but he was not aware of the bullying allegation he had made. He was also aware that disciplinary action may be put in place, and that TK was asked to investigate matters in the project group.

#### **Claimant's case:**

The claimant gave evidence that in 2002 the CEO asked him to join the respondent initially as cover for a worker on maternity leave. FOC was his immediate line manager. He said that he loved the job, but that it was a difficult one-person project. He also recruited students as volunteers. Over time his relationship with his line manager deteriorated, he would go to him with issues but these were not dealt with, nor was he getting adequate support. In October 2006 he had to go to the CEO in order to resolve these issues. He was working with vulnerable young people who needed help, but cheques were taking 2 to 3 weeks to come through for projects, so he was unable to plan ahead. He had a good relationship with the CEO, but neither he nor the organisation responded to him adequately.

He said that he drew up a plan for a summer project and met the committee about the plan. When he sought cheques for this, the claimant's line manager told him he should not have been doing this extra work. This drove him to draft his letter of resignation. He had simply wanted to do the job he was employed to do, but was prevented from doing it. Receipts were the dominant issue, but even when he furnished these, the cheques were not forthcoming.

After receiving advice from his colleagues and family, he withdrew his resignation, but he then got a letter from the CEO accepting his resignation. After this he went on sick leave. He was shocked that they did not ask him to discuss the issue. The letter withdrawing his resignation was never acknowledged. He was not even invited in to document his complaints. He was told that there would be a bullying investigation, but this never happened.

He told the respondent that he could go back to work in December 2007, however they told him to take holidays until 10 January 2008. He was told that there was no work for him on his return, and that the office building was not fit for him. His line manager told him not to discuss financial issues

with the management committee. He asked them was he suspended, they made it clear that this was not the case, but they just sent him home. He said that he was never told that his job was at risk until he received a letter from them on 14 March 2008. They also informed him that re-deployment was not an option. He was asked to send in his CV regarding vacancies that had been advertised, but subsequently got a rejection letter from them, without being given a chance to apply for the vacancies. He said that he did communicate his concerns about the letter of 14 March 2008 to them, and asked to be re-deployed.

**Determination:**

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal is satisfied that a genuine redundancy situation occurred in relation to the claimant's employment and within the meaning of the legislation.

The Tribunal is not satisfied from the evidence presented in respect of the termination of the employment that it constituted an unfair dismissal.

Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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