

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:  
Employee - appellant

CASE NO.  
UD831/2008

against the recommendation of the Rights Commissioner in the case of:

Employee

V

2 Employers

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P McGrath

Members: Mr J O'Neill  
Mr N Broughall

heard this appeal at Dublin on 27th November 2008 and 16th July 2009

Representation:

Appellant(s): Ms Deirdre Creighton BL, instructed by:  
Ms Suzanne Glazier  
S T Glazier & Co  
27 Carrysfort Avenue  
Blackrock  
Co Dublin

Respondent(s): Ms Rosemary Mallon BL, instructed by:  
Ms Gill Woods  
Arthur Cox, Solicitors  
Earlsfort Centre  
Earlsfort Terrace  
Dublin 2

The determination of the Tribunal was as follows:

The Tribunal has carefully considered the evidence adduced in the course of this two-day hearing. The Tribunal was impressed by the evidence adduced by the appellant. It is clear that the appellant was a competent and ambitious employee of the company. It was with disappointment that the appellant accepted that she had missed out on promotional chances in the middle of 2005. With the encouragement of the employer, the appellant was encouraged to redouble her efforts (especially in the area of sales) and her promotional prospects would be reconsidered at the end of 2005.

A change of management occurred at the end of 2005. Shortly after this time the appellant was told that the promotion, towards which she had been working, would be hers as soon as a third premises came on stream. There were two Business Centre Managers (BCMs), and a third one would only be required once the third premises known as the 'Steelworks' was opened.

The Tribunal has no criticism of the respondent company up to this point in time. The company is absolutely entitled to recruit a new BCM from outside the company if the company does not believe the appellant is, as yet, ready for the position. From the appellant's point of view the advantage was hers. She was no longer part of a review process and had, in fact, been offered a promotion. In addition, the Tribunal does not have any particular criticism of the company for making the promotion conditional on their ongoing expansion plans coming to fruition.

As a part of their restructuring and in readiness for the proposed expansion plan, the company moved the appellant from its Ballsbridge centre to its Harcourt Street Centre. Not a surprising move given the long-term plan to have the appellant made BCM of that centre in Harcourt Street.

The appellant's difficulties started on commencing her tenure in Harcourt Street in the middle of March 2006; the appellant felt this was a demotion. She was not entrusted with as much work and authority. Significantly, her remuneration took a drop as she was unable to earn extra sales commission.

However, given that the appellant went out on personal leave from the middle of May 2006, the Tribunal is being asked to look at an eight to nine week period during which the appellant's workplace experiences were such that her position was becoming untenable.

The appellant returned to work in the middle of June 2006. At this point in time the appellant takes offence with the way in which she has been treated whilst out on personal leave. Perhaps the respondent company should have been more sensitive, and yet there is a fine line between polite enquiry and invasiveness. Additionally, the appellant interprets some communication from her manager to be harassing and unreasonable.

The appellant had a difficulty with being 'trained up' for the job of BCM. However, the respondent is entitled to put the appellant through her paces in preparation for the upcoming promotion. The appellant was clearly resentful of this imposition and saw it as a demotion. Indeed, it makes sense for the company to 'train' the appellant for the job under the guidance of the acting Harcourt Centre BCM.

Within ten days or so of her return to work, the appellant calls for a meeting with her manager. Both parties have extremely different versions of what transpired in the course of the meeting. The appellant firmly believed her position was under threat. The manager states this was never his

intention.

In reality the prospects of a promotion were indeed on hold in circumstances where the third centre was not coming into play as quickly as had originally been anticipated. Neither party can be blamed for this fact, nor was the extent of the delay yet known to the parties.

The appellant went out on stress-related sick leave. There can be no doubt that a culmination of factors, both personal and work related, had left her at a low ebb. As was her right, the appellant writes to the HR director pointing out her difficulties. This, in effect, is the start of a grievance process which, had it been correctly applied, might have well have seen a satisfactory resolution of the appellant's problems.

However, for reasons which have not been made known to the Tribunal, the HR manager's reply of the 17<sup>th</sup> July 2006, to the appellant's letter of the 28<sup>th</sup> June 2006, is disciplinary in nature though it specifically purports not to be. The author makes a plethora of allegations against the appellant, which had never before been raised with the appellant. The source of these allegations remains a mystery to the Tribunal. The Tribunal notes the sentence, 'Any of these would constitute legitimate grounds for official disciplinary warnings'.

The Tribunal notes that the appellant's letter of the 28<sup>th</sup> June 2006 is the second letter of grievance sent to the said HR director. The first one dated the 13<sup>th</sup> March 2006 was never replied to. The second one, as referred to, was replied to by way of accusation.

In concluding, the Tribunal unanimously finds that the appellant's position became untenable and that she could not reasonably be expected to return to a workplace where the grievance procedure was denied to her. The Tribunal upsets the decision of the Rights Commissioner, and accordingly awards compensation in the amount of €9,000 (nine thousand euro) under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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