

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD208/2009

Against

2 EMPLOYERS

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms C. Gleeson B.L.

Members: Mr F. Moloney
Ms. N. Greene

heard this claim at Dublin on 21st July and 12th October 2009

Representation:

Claimant : Mr. Matthew Jolley B L instructed by
Bowler Geraghty & Co., Solicitors, 2 Lower Ormond Quay, Dublin 1

Respondent : Mr. David Farrell, IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

Claimant's Case

The claimant's status as an employee with the respondent commenced in February 2006 when he signed a contract with the company to work as a warehouse team manager. The witness maintained he was never furnished with a grievance procedure. That contract stated, among other things, that his normal weekly hours of work were forty. It also contained the clause:

The operational requirements of the Company are such that at certain times it will be necessary for you to work in excess of your normal working week, it may also be necessary to work additional shifts.

The claimant maintained that he always worked more than the normal hours required as his average working week amounted to fifty-six hours a week. He had expressed his displeasure at that situation on a number of occasions to the management of this company. That company in turn only had one client, which was the XXXXXX retail group.

In November 2007 the claimant both secured an increase in his salary and a change of role to that

of a promotions co-ordinator. His complaints about working excessive hours and his request for assistance resulted in the placing of a colleague in the warehouse to share that workload. He met the general manager in February 2008 and the outcome of that encounter was a temporary pause in overtime work for the claimant. By early summer 2008 that co-worker was transferred to another shift and his position was not replaced despite requests by the claimant for this to happen. Due to a foot injury the claimant was forced to go on sick leave for twelve weeks that summer.

Upon his return to work the claimant's weekly working hours well exceeded forty and again his requests for assistance went unheeded. He worked eleven hours one day in October and expected that pattern to continue for the next couple of months. The claimant was not disappointed with the assistant manager's reaction to his application for a salary increase when the two met in October 2008. However, he was disappointed at that manager's vague response for his request for assistance. That manager told him that he would "look into it". There was no mention of receiving help from two other workers. Earlier the general manager had told him that he was the one to come to should the claimant need help. The witness cited an email from that person on 26 October 2008 that read:

I will meet you, but if its (sic) just to moan or ask for more money, is there any point.

The claimant described this response as a slap in the face. His complaints did not relate to wages. He replied stating *I guess there is no point in that case*. The following day he wrote an email to the respondent's sole customer under the heading:

This is how (un)Professional XXXXX's Management is. That email read in part:

This is probably my last day in the business.

*As you can see down below, things have gone a little bit too far.
I'm not going to waste my health to do the job when there is nobody in place in management to talk and get the necessary and essential help.*

Now it's all up to you.

It would take some time to highlight all things that we do wrong in this place but "is there any point" (claimant's block script)

Contrary to the claimant's expectations there was no overt reaction from XXXX to this email. However the general manager belatedly reacted on 18 November when he wrote to some of his colleagues that he was not prepared to accept such behaviour from the claimant.

From 28 October up to 3 December 2008 when the claimant gave notice of his intention to resign, medical certificates were issued on his behalf stating he was unable to work due to occupational stress. By that stage the witness had decided not to return to work due mainly to the treatment he was receiving from the respondent and the tone and content of the general manager's earlier email. References were made to the miscommunication between the claimant and the respondent following the commencement of his sick leave.

Respondent's Case

The assistant general manager who described the company as a hands-on organisation said that warehouse operations went through peaks and troughs. The witness accepted that at times the claimant worked excessive hours there but added that the respondent tried on a couple of occasions to dissuade him from doing that. This manager had no recall of receiving either direct or indirect requests from the claimant for assistance to carrying out his duties as promotions co-ordinator. During the claimant's twelve weeks absence from work due to a foot injury in the summer of 2008 the respondent had engaged two other people to perform his duties.

The witness and the claimant met in the middle of October 2008. The primary purpose of that meeting was to discuss the claimant's application for a salary increase. In declining that request the witness indicated to him that the situation would be reviewed in the New Year. The witness acknowledged that the claimant did raise the issue of assistance and while not certain how he exactly responded the assistant manager was certain he addressed that issue with him. Besides it was common knowledge that once the relaying operation was completed in the warehouse the two people involved were then going to help the claimant cope with his workload.

The witness reported the contents of that meeting to the general manager. The subsequent emails between the claimant, the general manager and others were linked to that meeting.

A human resource officer outlined the mix up and miscommunication between her office and the claimant from October to December 2008. The claimant furnished the respondent with a residential address on an annual basis. His medical certificates showed another home address. The witness accepted that an oversight occurred in that this was not seen at the time. Consequently, and as was company practice she wrote to him twice in November asking him to attend a meeting regarding his absence. She regarded his note of 3 December in which he gave notice of his resignation as a response to those letters. It was also company policy to conduct exit interviews for departing employees who were "on site". In this case no such interview process was arranged.

Determination

The claimant came before the Tribunal with a claim for constructive dismissal under the Unfair Dismissals Acts, 1977 to 2007.

In a case of constructive dismissal the Tribunal must concern itself with many factors surrounding the dismissal but primarily whether the Claimant's decision to leave his employment was reasonable in all the circumstances. The Tribunal having listened to the evidence presented by both sides over two days finds in an unanimous decision that the claimant did not act reasonably in resigning from his position and therefore his claim fails under the above Unfair Dismissal Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

