

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

Employee
- *appellant*

CASE NO.

UD120/2009

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

Employer

- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr C. Mc Hugh
Mr A. Butler

heard this appeal at Wicklow on 21st September 2009

Representation:

Appellant: Malachai Duddy BL instructed by Allen & Associates, Solicitors, Main Street,
Newtownmountkennedy, Co. Wicklow

Respondent: In person

This case came before the Tribunal by way of an employee appealing against the Recommendation of the Rights Commissioner ref:r-061596-ud-08/MMG

The determination of the Tribunal was as follows:

Appellant's Case

The appellant gave evidence that she commenced employment with the respondent on a part-time basis in November 2006. On the evening of the 31st October 2007 she was on the checkouts serving a customer. A trainee manager (hereinafter referred to as CH) who was off duty approached the appellant from behind and shouted at her "you shut your mouth I'm warning

you". CH also drew his hand over his face as he shouted at her. She apologised to the customer she was serving at the time. The appellant maintained that the manager on duty at the time witnessed the incident.

She left the checkout with permission from the manager on duty. She proceeded to the clocking machine where CH was talking to another staff member. The appellant said to CH "how dare you talk to me like that" CH replied " I don't give a **** I will sort you all out. The appellant clocked out and went home.

The appellant went to work as rostered the following Sunday. She hoped to speak with the store manager regarding the incident but he was not on duty that day. Another manager was on duty but he was friendly with CH and when she mentioned the incident to him he started laughing and walked away. This was her last day in work for three weeks, the first two weeks were planned annual leave and the third resulted in her absence due to an injury.

While away on holidays she had hoped that somebody had brought the incident to the attention of the store manager. On the day she was due to return to work, while getting ready for work, she telephoned the store manager. He informed her that he was not aware of any incident. She explained to him what had happened on the evening of the 31st October 2007. He told her he would look in to the incident and that she could stay at home. She received a telephone call from the store manager two to three days later. The store manager told her that he had a chat with other staff regarding the incident. He had spoken with CH and reprimanded him and that she should come back to work and avoid CH. The appellant thought that the store manager should have invited her in for a formal interview in relation to the incident. There was no formal investigation. She did not know how CH was reprimanded but she felt he should have been suspended for a week but not dismissed. She waited for about three days and she decided that she would submit a letter of resignation.

The appellant maintained that she went to the store and handed her letter of resignation to the new store manager who had replaced the store manager she had been dealing with. The appellant asked him to leave this letter on the owners' desk. Within this letter the appellant outlined the incident and her complaint. She wrote the letter as she felt she could no longer work for the respondent because of the way she had been treated. The appellant could not produce this letter of resignation to the Tribunal, due to difficulties with her home computer. The respondent maintains they never received this letter of resignation. The appellant denied that at the time she wanted to leave as she was fed up working the evening shifts. The appellant had never any previous bad experience with CH, however she mentioned that she had seen him bullying staff.

Determination

The claim under the Unfair Dismissals Acts, 1977 to 2007 was one of constructive dismissal, accordingly it fell to the appellant to make her case. The Tribunal emphasised the importance of the letter of resignation in relation to the evidence. As this letter was not available to the Tribunal they were unable to make a finding in relation to same.

To ground a claim for constructive dismissal a claimant must satisfy the Tribunal that he or she made reasonable efforts before resigning e.g. by invoking the grievance procedure. In the present case the employee made no reasonable efforts to pursue her complaint. At one stage during the course of her evidence she stated this employee intimidated her, but she turned up as rostered for work a few days later.

The Tribunal decided on the day that the respondent had no case to answer; therefore the Tribunal dismisses the appeal under the Unfair Dismissals Acts, 1977 to 2007 and overturns the Recommendation of the Rights Commissioner.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)