

EMPLOYMENT APPEALS TRIBUNAL

| CLAIM(S) OF: | CASE NO. |
|--------------|-------------|
| EMPLOYEE | UD1501/2008 |
| EMPLOYEE | UD1502/2008 |
| EMPLOYEE | UD1503/2008 |
| EMPLOYEE | UD1504/2008 |
| EMPLOYEE | UD1505/2008 |
| EMPLOYEE | UD1506/2008 |

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Cagney BL

Members: Mr D. Moore
Mr. P. Woods

heard this claim at Dublin on 6th May 2009
and 17th July 2009

Representation:

Claimant(s): Mr Richie Browne, Unite Trade Union, 55/56 Middle Abbey
Street, Dublin 1

Respondent(s): Mr. John Barry, Management Support Services (Ireland)
Limited, The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:-

Claimants' Case

BT the 5th named claimant told the Tribunal that she had concerns regarding her wages and health and safety in the respondent. On numerous occasions she endeavoured to resolve the issues and she spoke to Mr. O'R (a principal in the respondent) and with R (supervisor). She telephoned R and informed her of the problems but received no response. The equipment the cleaners used was inadequate. The cleaners complained about the products that they were using. She waited for R to come in on Tuesday, Wednesday and Thursday. R came in on Friday and told her that she had four cleaners who were going to commence work on Monday. R would report to the building on Fridays if she was distributing the wages. BT did not resign from her

position as the work was ideally located for her and she stated that no one in their right mind would resign. She was not really aware of the respondent's disciplinary or grievance procedure. She did not submit complaints in writing and if she had complaints she addressed them on the telephone.

On Friday 12 September she went to work and R said goodbye. Two replacements were in place for two cleaners who were ill. R told BT that she had four cleaners ready to start in their place on Monday. The claimant understood that all the claimants were being let go. Mr. OH told the claimants he was sorry to see them go. She did not have a communication from anyone in the company in this matter. R told the claimants that their P45s would be posted to them. They were sent the incorrect P45 and had to return to the building for them. There was never an offer of redundancy from the respondent. The claimant was distraught and could not believe what was happening. She did not contact anyone in the respondent. Four cleaners commenced work on the following Monday. Since then she has been in receipt of social welfare and she registered with FAS. She endeavoured to obtain alternative but was not successful.

In cross examination she stated that she was a supervisor and if a cleaner was on holiday she ensured R was informed and a replacement cleaner would be provided. She assigned staff within the building that they cleaned. If cleaners had more to do in one area other cleaners would help out. A transfer of undertaking had taken place and she liaised with the area manager of the previous company if she had a problem. The claimants asked the respondent to make union deductions on their behalf and they were informed R would do this but it never happened. The cleaners were members of a union for a couple of years. She could not recall what she read in a contract that she was given but she had a few issues with it. She disagreed that Mr. H agreed to make union deductions for them. She had problems with equipment and the nozzle of a Hoover. When asked if the hoover bags were so full that they could not pick up dirt she replied that the claimants had common sense. Complaints were made from time to time regarding the cleaning and a note would be left that an area had not been cleaned. In a building that size complaints were always going to be made. Six cleaners undertook the work of seven cleaners and R told her to pay attention to detail.

She did not address the matter with the union as she thought that the claimants could resolve the matter themselves. She never resigned from her employment. She may have said to R that she was tired of the situation and she could not give notice on behalf of her colleagues. When she arrived in work on Friday R was already there speaking to the claimants. The first thing R said to BT was that her hair was nice and then told her she was here to say goodbye. Everyone spoke at once and bad language was used. R told her that the P45's would be in the post. On the following Monday she returned to retrieve her belongings from her locker.

She did not know who to go to and she went to a local representative and had a couple of meetings with him. The respondent did not want anything to do with the claimants. The respondent had meetings with the union on 3 November 2008. She did not resign from the respondent. When she was asked if the respondent offered her re-employment she replied that under the Terms and Regulations she felt that the trust had gone. She did not know what the terms and regulations were. She reiterated that she could not return to work and the relationship had irretrievably broken down.

In re-examination she stated that she did not receive verbal or written warnings.

In answer to questions from the Tribunal she stated that she was given a contract a year after she commenced with the respondent. The transfer of undertaking occurred in January 2006 and she

was a member of the union then. She could not remember if she signed a form to deduct union contributions. The meeting on 12 September was a shouting match. R was on site when she arrived. Four people filled six positions. There was never a suggestion of redundancy by the respondent. She could not recall who R spoke to first. BT suggested that they should discuss the matter in the canteen. R said goodbye and told them that they would receive their P45s in the post. They continued with their work as best they could and finished the shift. On Monday afternoon she along with a colleague returned to the building and she collected her belongings. She was able to gain access, as she knew the code. As the incorrect P45s were issued the claimants returned to the building. They rang the bell and Mr. H told them to return in an hour. They returned and collected their P45s and left. Regarding the respondents offer to the cleaners to return to work she said she could not trust the respondent. The respondent let the cleaners go for no reason. She would not get her job back in the same location.

She did not know what her terms and conditions were. She did not ask anyone to explain her terms and conditions of employment. She could not recall which terms and conditions of employment she read. She did not raise a grievance with R or her union, as she was annoyed. R did not tell her that the meeting on 12 September 2008 was a disciplinary meeting and she did not receive prior notice.

VW (the sixth-named claimant) told the Tribunal that the cleaners had been having problems in the job and that BT had rung R to solve this whereupon R had said that she would be in on the following Tuesday. However, R did not do so.

On Friday 12 September 2008 R came in but BT was not there. VW and a daughter of MOC (the first-named claimant) were there. (The daughter was covering for MOC). They had a row with R as to why they were being let go. R said that she had four ladies to start on Monday. VW had been there sixteen years. She would not resign. Nobody resigned. There had been problems e.g. regarding the wages of EL (the fourth-named claimant) and the fact that the hand towels were so small that they kept falling through the cracks in a grille. They had thought that R was coming about three complaints that they had. BT had said to come in and sort this by Friday.

VW told the Tribunal that the cleaners had been there a long time but that R was just getting rid of them. They were all in shock. EL's wages had been wrong but they were being dealt with.

Acknowledging that the ladies had had a row with R and saying that it would be lying to say they had not, VW said to the Tribunal that they had never been in this position before. VW accepted that the ladies had done "a protest and sit-in" saying: "We felt we had had to fight for our jobs back."

VW stated to the Tribunal that the ladies had done their work on the Friday to complete their shift although they had been told that they were foolish. They then went home. There was no communication from the respondent after that. They went to "the dole office" but their details were wrong and they had to go back to get them redone. VW did not think that EL's wages "were ever fixed" and went on to say that cleaners' wages had been wrong when others had come in to cover.

The ladies went to seek advice. They wanted their jobs back. They went to see RBB (the abovementioned local representative) who said to protest to try to get their jobs back. As far as the ladies were concerned, they had been sacked by R on the Friday night.

Asked at the Tribunal hearing for a reason for the alleged sacking, VW replied that R had said that the respondent was going to restructure and that four women would come in on Monday even

though six women's employment ended on that Friday.

VW told the Tribunal that Social Welfare had asked what had happened whereupon she had said that the ladies had been sacked on Friday 12 September without notice whereupon she was told that they were entitled to two weeks' notice and to go back to the respondent. The ladies were in the local newspapers.

Acknowledging that she had been seeking new work while employed by the respondent, VW said that any new work would have been in addition to her night job with the respondent which she had never left.

MOC (the abovementioned first-named claimant) told the Tribunal that she had had about eighteen years' service and that her employment with the respondent had ended on 12 September 2008. She had been doing some fifteen hours per week for the respondent but she had started holidays on 11 September and had not been there on the Friday (12 September). She had been there on the Monday (8 September) when BT had rung "about the things that were wrong". R had said that she would come on Tuesday 9 September but had not done so.

MOC did her shift on Thursday 11 September and started holidays on Friday 12 September for two weeks. Her colleagues subsequently informed her that there was no job there with the respondent for MOC because the colleagues were no longer with the respondent themselves. MOC did not contact the respondent again. There was no approach to her from the respondent either about a sacking or about a return to work.

Asked about the respondent's custom and practice regarding holidays, MOC replied that "we would get somebody in" and that BT would tell R about holidays and that there was cover for the lady who worked there. MOC had a daughter who had worked there years ago. The respondent would pay when somebody was working. MOC could pay her daughter. The security guard there would know who was coming in.

MOC said that she had not been paid holiday pay in advance and that, after about a month, she had got her P45 without a cover letter.

PD (the second-named claimant) told the Tribunal that she thought that she had been on two weeks' holidays. She said that BT was a neighbour who would contact R by mobile phone. PD thought that BT was joking when BT told her that they had been dismissed. PD was told that R had said that BT's hair was lovely and that she (R) had come to say goodbye.

PD said that the next contact from the respondent was when she got her P45 but that the respondent had dated P45s wrongly.

ER (the third-named claimant) told the Tribunal that she had about six-and-a-half years' service with the respondent but that her employment had ended on 12 September 2009. She had done fifteen hours per week.

Asked if she had any extra evidence to give, ER said that she agreed with what had been said before in that R had come in and said "this is your last day".

EL (the fourth-named claimant) told the Tribunal that she had about four years' service with the respondent but that her employment had ended on 12 September 2009. She had done fifteen hours per week.

EL said that R had said “you six are finished tonight” and that she (R) had four ladies for Monday. There was shock. “Choice words” were said but the ladies were “gone” and four girls were replacing them. When R was leaving there was no information except that their jobs were gone. The respondent must have thought that R had the authority to do this without a “go ahead”. EL had thought that R was there to fix her wages.

Respondent’s Case

The abovementioned R said that she has a degree in business and HR management and that she had worked for three years for the respondent for whom she held the post of area manager. She stated that she had a good knowledge of disciplinary and grievance procedures.

R explained that the respondent had a client (VF) which, in turn, had a client (EF) in whose building the six claimants had worked as cleaners. At EF’s building (hereafter referred to as EFB) BT (the fifth-named claimant) had reported to R.

R described her relationship with BT as “normal” and “fine”. There were small issues like on any client site but nothing big. R and BT “got on not too bad”. R said that “you have to speak personally to people”.

However, R did say that she did not really have interaction with the rest of the respondent’s staff at EFB. R said that “the team worked through BT”. Asked if she visited often, R replied that she would visit the client EFB once or twice a week to meet staff or the client.

The respondent’s cleaners worked from 5.30 p.m. to 8.30 p.m. R used to visit before that and could be gone before the ladies arrived. EF was a good client but demanding. There were little things that the respondent would get complaints about as being things to be sorted out as soon as possible.

Next, R told the Tribunal that she and BT had spoken about a possible leaving. This was a long time before the ladies left. BT said that all of the cleaning crew might go somewhere else. This could have been six months earlier.

At the beginning of September 2008 there was a conversation which lasted about twenty minutes. R spoke to BT who was very sad and exhausted and tired. R offered that BT could take a break. BT mentioned that the others might follow her. R offered her a break from the job. BT said that she would think about it, speak to the other girls and tell R the following Monday (8 September 2009).

On the said Monday BT said that the ladies were all going on Friday. She and R did not discuss issues or any specific problems that day. The conversation was at 2.00 or 3.00 p.m. i.e. “not within working hours”. On Tuesday 9 September R’s daughter got sick and R told BT that she would go to EFB on Friday (12 September 2008). The respondent could not recall the time of the second conversation.

On Friday 12 September R was on-site at EFB at about 4.30 p.m. and walked around the building. At about 5.30 p.m. R went into the storeroom. BT followed her. R told BT that she looked nice because BT had had her hair done. R said that she had come to say goodbye to BT. BT went to see the other girls. R did not say the words “last day” to the other ladies. BT said that R had come to say goodbye.

There was not really any discussion about coming to say goodbye. BT was leading the conversation. The ladies asked when they would be paid and get P45s. R said that it would be with the wages which they would get in two weeks' time.

R told the Tribunal that it was "very difficult to recall what was said" and that "there was a lot of screaming about why MO'R and PH (the respondent's principals) had not come. The ladies were calling the respondent names. R (not a native speaker of English) was in shock. She could barely hear or understand. Because there were six of the ladies R "could not say anything". She "was in real shock". BT said: "Don't worry! We'll do our work today." R asked about the dispenser key and was told that it would be left in a uniform pocket. It could have been about 5.45 p.m. by then. By 6.00 p.m. R was sitting in her car.

Asked at the Tribunal hearing if she had intended to dismiss staff, R replied: "No. I never said that to anybody." R told the Tribunal that BT had said that all the staff were leaving.

Asked if there had been problems with equipment, R replied that there had been Hoover problems in that the respondent had once been told that the place had not been hoovered for a long time and that it needed a deep clean. The Hoovers did not have suction. This was the big issue with the Hoovers. R discussed this with the staff and offered a Hoover-bag change.

Also, one of the girls had got a breathing problem regarding chemicals. R had then spoken to BT who had organised that the girl was taken off that area. The chemicals were normal chemicals which the respondent had used and now continued to use on all sites. R was not told that an EF person had complained about chemicals. Neither was she told about rashes on people's hands. Since then there had been no problems regarding chemicals.

R now told the Tribunal that after Monday (8 September 2008) she had told MOR and PH as well as EF. R had then been told not to proceed with anything unless the respondent was told because R was not sure. On Monday 15 September R did not have staff lined up. She got staff from Dublin Airport. She brought six in that day giving a lift to one herself. Four of them were now working at EFB. R did not say anything about a restructuring. R was familiar with the respondent's disciplinary procedure and told the Tribunal that the procedure "would take really long". The ladies had got no warnings.

R confirmed to the Tribunal that complaints had always come through BT. Regarding trade union deductions, it was put to R that it had been said that PH had said that R had a friend in a major union (S) who could help. R replied that it had not been her experience that staff had wanted union dues deducted. R's recollection was that BT had mentioned that the ladies were in S whereupon PH had offered help and BT had said that the ladies would sort it out themselves.

Regarding terms and conditions of employment, R said that the ladies had given them back because they would not sign them.

In relation to Friday 12 September, R told the Tribunal that there had been two ladies doing cleaning work for the respondent at EFB whom R had not known and that the two ladies on holidays had not booked holidays through R. R had not been expecting what happened. She told the Tribunal that she had made no effort to contact the two ladies who had not been present and that she would not have had phone numbers for them.

Giving sworn testimony, the abovementioned PH said that he was the respondent's

operations director. He and the abovementioned MOR were “joint shareholders”. In January 2007 the abovementioned company, VF, got a contract with EF related to EF’s building (heretofore referred to as EFB). The respondent was VF’s supplier for cleaning services. The respondent took this over from another entity (EMS) for which PH had been general manager in previous years. Although the cleaners’ P45s had not come in time and the respondent might have put them on emergency tax, the respondent paid them anyway. There were always small issues. There could be ups and downs with a site. PH met BT twice and met the staff once.

At the start, the employees said that they were in S trade union. PH told them that R had a friend in that union and that she would do the forms. BT said that they would do that themselves. PH had got no indication from EMS that the ladies were S members.

PH told the Tribunal that there were complaints about dust in corners and said that it was a disgrace that the hoovers were not empty and were in such a state.

Asked if there had been difficulties about payroll, PH replied that the respondent had put employees on full pay and that they had signed that they would refund the respondent money if they were overpaid.

Asked if contracts had been signed, PH replied that the respondent had never got them back.

Regarding Monday 2 September 2008, PH told the Tribunal that he got a phone call on that day from R saying that BT (the fifth-named claimant) was leaving and that BT had suggested that the other ladies would follow. PH was happy that R had given them a week to think about it.

Regarding the following week, PH stated that R said that BT was definitely going and that the other girls would go. PH told R to thank the ladies for their work and to wish them the best for the future. The respondent had a staff of two hundred and fifty. He had thought that staff could be brought from another site. Four came in a car from a site close to Dublin Airport. There was limited time for the putting in of full-time staff. PH made no decision to put staff in until Monday evening.

PH stated to the Tribunal that no decision had been made to dismiss the six claimants. They were in S trade union. PH had dealt with JS (a senior trade unionist) and told the Tribunal that JS “would be all over me like a rash”.

PH got no call from BT or the other ladies. He and MOR (the other of the respondent’s principals) spoke every day. Neither of them got any calls. PH’s phone was “switched on twenty-four seven” as was that of MOR. Any call would have been answered.

P45s would be issued on 19 September 2008. The ladies came to the office saying that the dates were incorrect. HM (a labour inspector) was in the office and suggested a change of date. The respondent had two labour inspector visits. All was correct.

The man who did the respondent’s accounts tried to deal with holiday pay. It was alleged that the respondent had dismissed the ladies. The ladies tried to picket outside.

A copy of a local news-sheet was furnished to the Tribunal. It was put to PH that it was alleged that the ladies’ wages had been incorrect and that the cleaning equipment had been faulty. PH denied both allegations saying that the HAS had complimented the respondent on its system.

After the ladies' employment PH received a call from BO from U (a trade union). PH said that S represented the ladies but BO said that he, in fact, represented them. BO sought a meeting.

A meeting took place on 3 November 2008. The respondent gave documentation about its equipment including its chemicals. Telling the Tribunal that BO had referred to resignations rather than dismissals, PH said that BO had requested that the ladies be reinstated or compensated failing which the matter would be referred to the Labour Court. MOR said at this meeting that he would reinstate the ladies in the south Dublin area where they lived. There was nothing about relocation to Dublin Airport. BO said that he did not think that the ladies would work for the respondent again but that he would talk to the ladies and revert to the respondent.

Giving sworn testimony (after the Tribunal was told that he had handwritten notes of his meeting with the respondent), BO said that he had come to the view that there had been a serious misunderstanding between the parties to this case. The employees had felt that they had spoken to their area manager about grievances. The other side had taken the view that the claimants had resigned collectively. BO had sought a meeting.

On 3 November 2008 the meeting got to a point where a decision had to be made. Reference was made to alternative employment. BO gave his opinion that the matter could be resolved through unfair dismissal legislation, reinstatement, re-engagement or compensation. PH and MOR (the respondent's principals) viewed the respondent as a start-up company and did not want to deal in that kind of money. They said that they would re-engage with conditions attached.

BO asked what these conditions were. He was told that they would not be taken back together at the same site. BO thought that the respondent employed about two hundred people across some fifty sites. The respondent did say that it had a site at Dublin Airport. It became apparent that the ladies had an issue and the employment ended on the Friday evening (12 September 2008).

Telling the Tribunal that he found it strange that the respondent would accept resignation from six people by a phonecall with one person, BO said that he thought that the respondent had erred badly in how it had handled the information from the area manager. Relations were strained but BO had not anticipated that the respondent would accept re-engagement with conditions attached. BO offered to engage with BT (the fifth-named claimant).

BO tried to make contact with PH and MOR. There was discussion on the trade union issue. Management was upset at what they saw as a campaign against that company by a local politician (RBB). BO had some sympathy for management concerns about the protest documentation. The role of BO's trade union had been to try to resolve this.

In a closing submission, the claimants' representative said that their case was that it was alleged that one person had verbally resigned for six individuals. The other five were not written to or approached to confirm. It was submitted that no responsible employer should accept this on hearsay.

In his closing submission, the respondent's representative said that there was conflict about what had been said. The circumstances were unusual. It was submitted that, when a resignation is not "in the heat of the moment", an employer is not obliged to go to great lengths. It was submitted that BT (the fifth-named claimant) had had her mind made up and had said that her colleagues had their minds made up. They worked as a very close unit. All the evidence showed BT to have been a spokesperson for them all. It was not unreasonable for the respondent to presume that BT was

telling the truth. The respondent was satisfied that it had been told that all of the claimants resigned. The respondent's representative said that perhaps, by making a threat to resign, the claimants felt that the respondent could pay more or put in an extra person.

The submission on behalf of the respondent went on to say that, if all of the claimants had walked out because of a row, the respondent should have checked but that, in this case, the employees could have raised grievances with management. There was communication with BO of U (a trade union). The ladies would not go back. EF (the client company) was getting letters. The re-engagement offer was not the act of an employer which wanted people out.

It was submitted that the claimants had chosen to resign for their own reasons and that they had got upset when a threat did not work out.

Asked what would be their preferred redress if the Tribunal found that the claimants had been unfairly dismissed, the claimants' representative nominated compensation and the respondent's representative said that there would be no problem with re-engagement but not to the site where the ladies had worked.

Determination:

The Tribunal is of the view that a situation occurred on Friday 12 September 2008 which prevented the parties engaging in a constructive discussion around matters which warranted a meeting in the first place albeit from different perspectives.

The Tribunal is satisfied, having heard all of the evidence, that resignations, however irregularly conveyed, occurred and the respondent could reasonably interpret it as such. There having been no dismissals, the claims under the Unfair Dismissals Acts, 1977 to 2007, fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)