

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE – *appellant*

UD1496/2008

against

EMPLOYER – *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. Fahy

Members: Mr. D. Morrison  
Mr. M. McGarry

heard this claim at Castlebar on 7 September  
and 22 October 2009

Representation:

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Claimant: Ms. Deirdre O’Kane B.L. instructed by Mr. Joseph Keyes,  
Kilfeather Keyes Solicitors, Bank Building,  
Hyde Bridge, O’Connell Street, Sligo.

Respondent: Mr. Alastair Purdy, Purdy Fitzgerald, Solicitors,  
Kiltartan House, Forster Street, Galway.

The determination of the Tribunal was as follows: -

This being a claim of constructive dismissal it fell to the claimant to make his case

#### **Claimant’s Case**

The claimant, who has some 30 years experience in the field, was a Commercial Insurance Customer service advisor with the respondent and its predecessors from November 2000. The claimant’s role was mainly in commercial insurance in conjunction with one of the Directors until the Director withdrew from the everyday workings of the company to work on a consultancy basis. The company was taken over and merged with the respondent in June 2006, which saw a significant increase in the claimant’s workload. The respondent merged with an additional Insurance brokerage, which again increased the claimant’s workload to include all commercial

insurance for the three amalgamated Insurance Brokerages.

The claimant originally had the backup of two other staff who did the administration and he had computer access to basic client information. In June 2006 the claimant's new line manager commenced and a new IT system was introduced. The claimant worked with another member of staff, not experienced in commercial insurance, until January 2008. He spent a lot of time advising and assisting her. The claimant was given one demonstration of the new IT system and expected to use it for risk assessment and account/policy information. Due to the mergers all previous cases, of which the claimant had no prior dealings with, had to be re-assessed and input to the new IT system. The claimant did not know how to use the new IT system effectively which contributed to the backlog of work, the line manager was aware of this.

In September 2007 the claimant had an appraisal with his new line manager. Despite the claimant's increased workload and lack of IT skills being discussed and ways to improve the situation examined no steps were ever taken to improve the claimant's IT skills. The claimant was not aware that there was any issue over his performance. The respondent merged with an additional Insurance Brokerage in January 2008. This further increased the claimant's workload and led to him working until 8 or 9 o'clock every evening and at weekends just to keep on top of his workload.

The claimant's line manager was aware that he was having difficulty managing his workload so held a meeting on 29 April 2008 where targets were set in order to address the backlog of work. The claimant was not aware that this was a disciplinary meeting. The claimant was instructed not to market policies with a value under €1,000-00, which should have eased some of the pressure but this was not the case as these cases still involved a lot of work.

The claimant received a letter dated 20 May from the line manager and informed that they would be progressing in line with the disciplinary procedures manual. The claimant did not appeal the verbal warning, as he was so shocked to receive it after 37 years without any disciplinary action taken against him. The claimant accompanied by a Director attended a meeting held on 23 May where the claimant read a statement explaining the issues affecting his performance. On 30 May another meeting was held where it was made clear that the respondent was not accepting the reasons put forward by the claimant for his perceived poor performance. The issuing of a verbal warning against the claimant was confirmed in a letter of 30 May from the line manager, which also set out a schedule for improvement in the claimant's performance. The claimant was advised of his right of appeal against this written warning. On receipt of this letter the claimant left the office and did not return as he felt his dignity was taken from him, he was undermined and badly treated and it would not continue if he returned to work.

The claimant did not respond to any attempts made by the respondent to contact him, he had lost all confidence and trust in the respondent. As a result of his lack of confidence in the respondent the claimant thought that it would be pointless to continue with the disciplinary procedures. The claimant's solicitor wrote a letter of resignation to the respondent on 30 September 2008.

### **Respondent's Case**

The Line Manager assumed that the claimant could handle his workload and did not notice the long hours he was working. When the claimant's colleague transferred in April not January 2008 other mechanisms were in place to help the claimant i.e. the new IT system and putting a halt to marketing policies with a premium less than €1,000-00.

The first time the line manager was informed that the claimant was overwhelmed was in May 2008 3-4 weeks prior to the disciplinary meeting. The line manager instigated weekly meetings to sort out any issues with the claimant's work and set targets for the following week. The claimant did not meet these targets; as a result the line manager had no option but to initiate disciplinary procedures. A verbal warning issued to the claimant, which was not appealed. The line manager was not aware that the claimant was suffering from stress and anxiety and was shocked at the letter of resignation.

During the claimants appraisal there was no IT training identified and no training was given to the claimant. The line manager agreed that the claimant largely met the targets set out for him in the weekly meetings. The line manager carried out the investigation and gave his results to a Director on 27 May. The Director held the disciplinary meeting on 30 May and gave his notes on the meeting to the line manager. The same day of the disciplinary meeting the line manager decided to issue the verbal warning to the claimant.

### **Determination**

The respondent only became aware that the claimant was in difficulty coping with his workload in late April 2008. Arising from this a meeting was held between the claimant and the line manager on 29 April 2008 and measures discussed in order to alleviate the problems. The line manager was dissatisfied with the claimant's response to the measures taken and invoked the disciplinary procedure. This procedure was instituted along the lines of the competence of the claimant. The Tribunal notes that this is an unusual ground to pursue against someone with the acknowledged experience of the claimant and clearly did not represent best human resource practice.

The disciplinary process resulted in the claimant receiving a verbal warning. The claimant did not exercise his right of appeal against the disciplinary sanction and never returned to work. The line manager attempted to keep in contact with the claimant and reassured him that his employment was secure. It was not until 14 July 2008 that the respondent became aware that the claimant was suffering from a stress related illness. The respondent later arranged a medical appointment for the claimant but he chose not to attend. The claimant's resignation was submitted in a letter from his legal representative on 30 September 2008.

It is clear to the Tribunal that there was not a harmonious working relationship between the claimant and his line manager. Nevertheless, once he had received the verbal warning, the claimant chose not to engage with the respondent, never invoked the grievance procedure or indeed took any action to make his position known to the respondent until his resignation was submitted. For all these reasons the claim of constructive dismissal under the Unfair Dismissals Acts, 1977 to 2007 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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