

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD511/2008

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Petty

Members: Mr. G. Phelan
Dr. A. Clune

heard this claim in Limerick on 27 November 2008 and 10 March 2009 and 2 September 2009

Representation:

Claimant: Mr. Glenn Cooper, Dundon Callanan, Solicitors, 17 The Crescent, Limerick

Respondent: Mr. Gerard O'Neill, O'Neill & Co., Solicitors, 25 Glentworth Street, Limerick
represented the respondent on the first two hearing days. The respondent was not legally
represented on the third hearing day.

The determination of the Tribunal was as follows:

The claimant's employment with the respondent began in 1998 and ended on 17 April 2008 when she resigned following a series of alleged serious breaches of her employment contract by the respondent culminating in a very severe and entirely unwarranted bullying tirade directed against her by AS of the respondent on 17 April 2008.

It was alleged that on 15 January 2008 the claimant had been demoted without reason or forewarning from quality manager to deputy quality manager. This change was announced at a meeting of staff.

The respondent's response to the claimant's complaints about the unilateral change to her position

within the company was to instigate a series of meetings which the claimant felt were substantively unjustified and procedurally unfair. On 7 February 2008 MB of the respondent requested the claimant to join her for a cup of coffee and a chat in the canteen. Without warning, AS and JR (also of the respondent) joined and the “chat” turned into a meeting about the claimant’s ability to do her job. The claimant felt that this meeting was disciplinary in nature. There followed a further meeting on 19 February at which MB said there was nothing to add to what had been discussed on 7 February and the subsequent meeting was merely to “formalise the procedure”.

By letter dated 22 February 2008 the claimant lodged a grievance with the company about her treatment in regard to both the demotion and the subsequent procedure which she felt was unfairly disciplinary. That grievance letter was never followed up on by the company except that on 1 April MB apologised for not responding to the letter of grievance.

The company’s alleged unjustified and unfair actions had a serious effect on the claimant whose doctor advised her to take a short period of leave because she was suffering from stress. The claimant was off work from 25 February to 5 March. A doctor’s certificate was provided to the company citing stress. Despite that situation the company still failed to respond to the claimant’s letter of grievance.

On 14 April 2008 the claimant was feeling unwell with cold or flu-like symptoms and asked AS if it would be okay if she went home early. AS asked her to work on until 4.00 p.m.. Some issues arose during the afternoon and AS was shouting and irritable with the claimant although things seemed to be smoothed over and sorted out by the end of the day.

The next day (15 April), the claimant allegedly could not speak at all when she woke up and was quite ill. Unable to talk on the phone she allegedly texted two colleagues before 8.30 a.m. in order to ensure that the message got through to the respondent that she would not be in that day. There were several attempted calls from the respondent during the day. The claimant responded by text message and even gave a note to her neighbour to ring AS. There were further attempted calls and a voicemail message from MB in the afternoon. The claimant asked her mother to call MB who asked that the claimant call her. The claimant kept her doctor’s appointment at 3.15 p.m. and was told that she had laryngitis and a temperature and was given a prescription. She was very concerned and under a lot of stress because the respondent had been ringing her so often during the day and so she decided to drop in her medical certificate personally. Without consent from the claimant, AS phoned the claimant’s doctor to discuss and obtain clarification of the medical certificate.

On Thursday 17 April 2008 the claimant returned to work. Before she had even taken off her coat, the claimant alleged, AS said that she needed to speak to the claimant. AS demanded an explanation as to what had happened on Tuesday 15 April. The claimant said that she had felt hounded by the respondent and explained all that she had done to relay the message that she would be absent. AS interrupted and told her to stop because she did not believe the claimant. AS suggested that the claimant was thick and stupid. After the claimant asked her to lower her voice and stop shouting, AS replied that she would shout as much as she liked, that the claimant was taking her for a fool but that it would stop now and welcomed the claimant to AS’s “boot camp”. AS, saying that she did not believe the claimant or the claimant’s doctor, told the claimant to leave her office and to get out of her sight. AS demanded a written apology on her desk first thing on Monday morning. When the claimant asked what it was that she had to apologise for AS said that she was not going to argue with the claimant but that she wanted the apology on her desk on Monday and that, after that, she did not give a damn what the claimant did.

The claimant was distraught at the way she had been treated and felt that she had no choice but to resign which she did shortly afterwards by phone to AS.

The respondent contended that the claimant had resigned her employment without giving the respondent any opportunity to investigate her complaints and that there had not been sufficient grounds to justify the claimant's decision to resign – a decision which was neither necessary nor desired by the respondent.

Determination:

The Unfair Dismissals Acts, 1977, defines dismissal of an employee as including

- (a) the termination by his employer of the employee's contract of employment with the employer, whether prior notice of the termination was or was not given to the employee and
- (b) the termination by the employee of his contract of employment with his employer, whether prior notice of the termination was or was not given to the employer, in circumstances in which, because of the conduct of the employer, the employee was or would have been entitled, or it was or would have been reasonable for the employee, to terminate the contract of employment without giving prior notice of the termination to the employer.

An employee must prove that dismissal occurred before any question arises as to whether dismissal was fair. The employee has done so in this case and therefore has discharged the onus of proof. She has demonstrated that the respondent's conduct was such that she had no option but to regard herself as dismissed. The respondent's conduct was such as to render it reasonable for her to resign.

The claimant had made efforts to seek internal resolution of her grievances. It was not established that the respondent sufficiently engaged with the claimant with a view to resolving her grievance. The claimant sought internal resolution of her grievances before her decision to resign. These grievances were not resolved. The evidence provided did not demonstrate that these grievances were sufficiently addressed in all the circumstances of the case.

This combined with the conduct of the respondent's general manager (AS) which conduct included namecalling, rudeness and humiliation. The claimant was told to get out.

The onus, having shifted to the respondent, has not been discharged by the respondent. In its own evidence, the respondent accepted that it did not make any great effort to resolve the matter after the claimant walked out.

The Tribunal finds that it was reasonable for the claimant to resign. However, the Tribunal determines that the claimant did contribute to the situation. In all the circumstances of the case, the Tribunal is unanimous in determining that the claim under the Unfair Dismissals Acts, 1977 to 2007, succeeds and in deeming it just and equitable to award the claimant compensation in the amount of €5,000.00 (five thousand euro) under the said legislation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)