

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:  
EMPLOYEE – *claimant*

CASE NOS.  
UD39/2009  
MN44/2009

against

EMPLOYER - *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P O’Leary BL  
Members: Mr T O’Sullivan  
Mr B McKenna

heard this claim at Dundalk on 9 July 2009, 25th November 2009 and 17th December 2009

Representation:

Claimant: Mr Vincent Nolan BL  
Instructed by Mr Conor G. Breen  
McDonough & Breen Solicitors  
Distillery House, Distillery Lane, Dundalk, Co. Louth.

Respondent: Mr Shay Fleming BL  
& Ms Angela Grimshaw  
Instructed by Ms Catherine Allison  
Catherine Allison & Co. Solicitors, 6 Roden Place, Dundalk, Co. Louth.

The determination of the Tribunal was as follows:

**Preliminary Issue**

The representative of the respondent made an application to have the case heard in camera because of the personal nature of some of the evidence in this case. There had been a relationship between the claimant and the CEO of the respondent. Particulars of the relationship could prejudice the CEO’s wife and family. The claimant could be embarrassed by the nature of the evidence.

He also made an application to have the CEO’s nomination as a respondent voided. The Club were

at all times the claimant's employer.

The claimant's representative objected to the application. He received no notice of the application. The claim before the Tribunal was one of unfair dismissal. The personal relationship between the claimant and the CEO led to her dismissal. The CEO's wife and family were not parties to the claim.

He objected to the CEO being removed as respondent. The claimant was paid by both the CEO and the Club. The Tribunal considered carefully the application to hear the case in camera. The Tribunal refused the application. The Tribunal determined that the correct respondent in this case was the Club.

### **Respondent's Case**

The claimant was dismissed for gross misconduct. She threatened to misdirect funds. The respondent lost trust and confidence in the claimant. The claimant had a duty to obey all lawful and reasonable orders of her employer and the consequence of her failure was dismissal.

The CEO gave evidence. He joined the board of the Club in June 2006 as CEO. He and his wife became the only shareholders. The claimant was employed in March 2006 as commercial manager.

In January 2007 the claimant was doing a lot of work and received a pay increase. He himself never employed the claimant.

In 2006 things went well. Things slipped in 2007 and the claimant had to be reminded to do important tasks. He spoke to the claimant but did not start disciplinary proceedings.

On 28 February 2008 the claimant updated him about projected finances. A potential sponsor, a local businessman, had pledged €25k in January. The claimant was handling the matter. Later local businessman asked him to send the claimant to collect the sponsorship funds. However, on 7 April 2008 the claimant still had not collected the sponsorship funds.

He had a meeting with the claimant and the Club Promotions Officer (CPO). He was concerned that several sponsorship funds had not been collected. He issued a verbal warning to both the CPO and the claimant. The CPO took it on the chin. The claimant was not happy.

Two hours later the claimant phoned the CEO and asked for a meeting with him in the boardroom. The claimant said that the potential sponsor would donate double the amount he had pledged and she demanded that he retract the verbal warning. He said the verbal warning would stand. The claimant threatened to ask the local businessman to make his cheque out to cash and not to the club.

Then the claimant threatened to lift the phone and call the CEO's wife and tell her about the relationship between the CEO and the claimant. The relationship ended before Christmas. To secure the sponsorship funds the CEO retracted the verbal warning.

The money was lodged on 28 April 2008. The claimant got very rebellious. She had succeeded in blackmailing him. The claimant was not a key holder and she would not return keys to the CPO. The CEO asked her for the keys and she refused to hand over the keys. At a board meeting the CPO reported that the claimant threatened to remove confidential papers from the office. The board instructed the CPO to talk to the claimant the next day and say to her walk away or be sacked.

The next day the claimant did not come to work. She sent a sick note. The following Monday, 30<sup>th</sup> June 2008, the claimant came to work. She did not agree with the walk away option. The CEO dismissed her. She did not say anything, just sat and smiled. Later they noticed that sensitive and confidential files had been deleted from the computer.

When the claimant's representative wrote claiming she was sacked because of the end of their relationship, he felt that it was blackmail again.

During cross-examination the CEO confirmed that the claimant had been dismissed on June 30<sup>th</sup> 2008 for threatened misappropriation of funds and for misappropriation of confidential documents. He agreed that his solicitor's letter dated 15<sup>th</sup> July 2008, which set out the principal details of the claimant's gross misconduct, did not refer to misappropriation of confidential information. He contended that he had told his solicitor about it prior to the letter being issued. The claimant's refusal to return keys was cited as a reason for the dismissal in the letter. The CEO contended that this was part of the reason for the claimant's dismissal.

The CEO contended that there had been an investigation of the issues by way of a board meeting to discuss the claimant's dismissal. He was not aware of the claimant being given a copy of the disciplinary procedure. He contended that he had given the claimant a copy of her terms and conditions dated March 21<sup>st</sup> 2006.

The CEO agreed that he had approached the claimant to take up the position at the club. He knew her from when she worked for his nephew at a company, which he owned. He contended that his relationship with the claimant ended in December 2007. He disputed the allegation that the affair had lasted a number of months and instead contended that it was a brief encounter. He disputed the allegation that he had taken the claimant to Castle Leslie for weekends away and contended that she was making it up. He disputed the claimant's contention that she had ended the relationship in March 2008 and that the CEO had been upset about it. He agreed that there had been an encounter with the claimant in March 2008.

The CEO agreed that the claimant had not been issued with a warning prior to April 2008. The CEO agreed that on the morning of April 7<sup>th</sup> 2008 the claimant raised concerns with him about another member of staff who was assuming duties of hers. That afternoon the CEO called the claimant and the CPO to a meeting where he gave them both a verbal warning. He did not inform the claimant that it was to be a disciplinary meeting.

He listed off approximately seven reasons for giving them the warning. These included the collection of funds and money for ground signs. He agreed that the claimant was upset by the warning and kept asking for the reasons. He told her that he'd given her the reasons. He did not give her a copy of the reasons. The claimant sought a further meeting that day and the CEO decided to record it without telling her.

At the later meeting the claimant told the CEO that she had secured €50,000 in funding from a local businessman. She phoned the businessman during the meeting to confirm. The claimant asked for the verbal warning to be removed, but the CEO considered that the verbal warning had worked, and therefore, he refused. The CEO contended that the claimant later said that if the verbal warning was not lifted he would not see the €50,000. He did not report the threat to the Gardaí. He contended that he lifted the verbal warning between the 16<sup>th</sup> and 21<sup>st</sup> April 2008, or else the club would not have received the €50,000. He disputed the claimant's contention that the verbal warning was never lifted. He agreed that he did not put the removal of the

verbal warning in writing.

The CEO disagreed that due to their previous relationship he was not the proper party to investigate the claimant's performance issues. He contended that he dealt with the facts. The CEO disputed the claimant's allegation that she was given €220.00 in cash by the CEO on top of her weekly wages, of €480.00, from the club. He stated that every so often if she brought in some sponsorship he would give her a few hundred euro out of his pocket, which the club was supposed to reimburse.

At a board meeting, on June 23<sup>rd</sup> 2008, the Club Promotions Officer told the board that the claimant had told him that she was going to leave and that she was going to take all the files with her. The CEO agreed that the claimant was not given an opportunity to respond to this allegation. The board deemed this to be very serious and, combined with the claimant's earlier threat to withhold funds, decided to dismiss her the following day. The claimant went on sick leave the following day and came back to work on June 30<sup>th</sup> 2008.

The CEO agreed that on June 30<sup>th</sup> 2008 he offered the claimant the option of leaving quietly with a reference or being sacked. She would not accept either. The CEO disputed the claimant's contention that she told him she had gone to see a solicitor. The CEO gave her two week's pay. He disputed the claimant's assertion that she only took clients' contact details, which are available publicly, and photos. He denied that he stood over her while she was at her computer before she left. He later found that everything was deleted from the file.

The CEO agreed that September 3<sup>rd</sup> 2008 was the first time misappropriation of confidential documents was cited as a reason for the claimant's dismissal. He contended that he contacted a computer expert to check the claimant's laptop on July 1<sup>st</sup> 2008.

On the day the claimant left she took approximately an hour to gather her belongings. The CEO observed her at her desk for about ten minutes before he left. No one else watched her after he left. The CEO stated that he did not feel that his previous relationship with the claimant clouded his judgement or compromised him in any way.

An IT (Intellectual Technology) contractor to the company gave evidence that in June and July of 2008 he installed computers at the club. On 1<sup>st</sup> July 2008 he was asked to look at a laptop. He looked for files on the CEO's instruction. He could see that files had been opened, as temporary files had been created, but he could not find the actual files. He did not have the software to find out what was deleted. It would have required expensive equipment to see further than the temporary files. He was not qualified as a forensic computer analyst. He had no evidence to show that items had been deleted from the laptop and he was not aware whose laptop it was.

The CPO gave evidence that he holds a dual role of General Manager and FAI (Football Association of Ireland) Club Promotions Officer; he is also a board member. He joined the club in March 2007. The claimant reported to him. He worked closely with her, but he found that from mid-2007 she became more difficult to deal with. He found that sponsorship money was not being followed up. He tried to resolve issues directly with the claimant. He had to answer questions from the board as to why sponsorship money had not come in.

At the meeting on April 7<sup>th</sup> 2008 he was also issued with a verbal warning because of money not being collected. He took it that he had received the verbal warning for not managing the claimant properly. The claimant was not happy about the verbal warning. At a further meeting on April 14<sup>th</sup>

2008 he was shocked that the claimant said that she held the key to the local businessman's money and that it would go into her account or the club's account.

Another issue was the keys. The board decided to appoint key holders and she was not one of them. He asked for her keys back but she said she needed them. The CPO believed she felt undermined by the move into new offices, the verbal warning, a new system of signing in, and being asked for the keys back. When she refused to return the keys the CPO passed the matter onto the CEO.

On Monday 23<sup>rd</sup> June 2008 there was a further meeting with the CEO and the claimant. She eventually handed back the keys. Later on she told the CPO that she had had enough, that she was leaving and that she was taking the sponsors that she'd built up with her. He told her that they belonged to the club. There was a board meeting that evening and the CPO believed that it was a big issue and so he told the board that the claimant intended to leave and take the files and contacts that she had built up. The board members were shocked. This was a serious issue, and added to the previous issue of the local businessman's money, it was decided to dismiss the claimant.

He met the claimant near the club on the morning of June 24<sup>th</sup> 2008 to collect a sick note from her. The claimant returned after her sick leave on June 30<sup>th</sup> 2008 at about 11am. The claimant was brought to the boardroom and told that because of threatening to steal files and the trust issue concerning the €50,000, she was being dismissed. The CEO gave her the option of resigning or being dismissed. The claimant would not accept either, so the CEO dismissed her and told her to collect her things.

The CPO later noticed that hard copy sponsorship files were missing and he raised the computer issue with the CEO. The CPO shared computer files with the claimant and found that sponsorship files were missing.

During cross-examination contended that he was the claimant's line manager. As the claimant had commenced before him he presumed that she had been given a copy of the disciplinary and grievance procedures. He considered that the claimant was frustrated by her treatment at the club. To the CPO's knowledge the only procedure in place to express frustration was to bring it to the attention of the CPO or the CEO. The CPO was unaware of the relationship between the claimant and the CEO prior to the Tribunal hearing.

The CPO knew the password of the claimant's laptop as they used each other's laptops. The issue of the €50,000 sponsorship, in April, was discussed between the CPO and CEO, but it was not brought to the board's attention until June.

The respondent's representative disputed the claimant's contention that she had not worked since her dismissal and contended that she had worked for another football club.

## **Claimant's Case**

The claimant commenced her employment in March 2006 after the CEO of the respondent company approached her boyfriend, his nephew, and asked if she would be interested in working for him. She was appointed to the role of marketing manager, which involved sourcing new sponsors, fundraising, maintaining clients and organising match nights. She contended that she was

never given any documentation regarding her position and that there was no grievance procedure and no disciplinary procedure provided.

The claimant contended that the CPO was not her line manager and that since the general manager had left in 2006 she had only relayed information to the CPO. She got on well in her role and was given a pay rise in March 2007. This was also the first time she received a payslip. At a meeting in February 2008 with the CEO and others she set out her projected sponsorship total for the year. The CEO offered her an extra €220.00 per week, which she received in cash from the CEO. The claimant contended that it was agreed that she would seek €25,000 in sponsorship from the local businessman, but that it had not been pledged already.

Her relationship with the CEO began in May 2007. She contended that he instigated the relationship. The claimant organised a function in December 2007, which she believed had gone well and on the night the CEO said it went well. However, the following Monday he said that the night was a shambles. They argued after the meeting, but made amends later. However, after that he behaved in a jealous manner towards her and she decided it was time to end the relationship, which she did in March 2008.

The claimant used the boardroom as her office in order to have privacy while discussing sponsorship with clients. She had a concern about another staff member undertaking her tasks and undermining her, which she went to the CEO about on April 7<sup>th</sup> 2008. Later that day the CEO and CPO came to the boardroom. The CEO took out a diary and listed off five or six different things and said that he was issuing her, and the CPO, with a verbal warning. The claimant asked why, but the CEO said that he was not repeating it and he left. She did not receive any documentation on the warning.

After the meeting the claimant spoke to the local businessman and told him that she had received a verbal warning. He was astonished and told her that he would invest €50,000. She met the CEO in the boardroom later to tell him. She was unaware that he was making an audio recording of the meeting. He was happy with the pledged funding but he refused to lift the verbal warning. The claimant was very frustrated by this and felt that she had been given the warning for personal reasons.

The claimant admitted that she kept asking about the warning. At a meeting the following week with the CPO and the CEO he told her never to mention it again to him. She asked for a partition, for privacy, in the new office being built, but he refused. She denied that she said the club would not get the €50,000 unless the warning was lifted. Instead, she contended that she asked the CEO whether if she had gotten the €50,000 on the morning of April 7<sup>th</sup> 2008 would she have been given a warning and he replied no. She also refuted the CPO's allegation that she had said that she held the keys to the local businessman's money. The local businessman had phoned her on Monday and told her the draft would be coming in. The draft was received on April 28<sup>th</sup> 2008. The verbal warning was never lifted.

In May 2008 the claimant was called to the boardroom where the CPO and CEO asked her to sign a fixed term contract to run until the end of the football season. It stated a totally different job description and a different salary. She had been receiving €700.00 per week since February 2008. It looked like a contract that the football players signed. The claimant took it away with her and didn't sign it.

In June 2008 the CEO told her that a new sign in system was being introduced and that she had to

hand back her keys. The CPO asked for her keys a few days later and she gave them back. There was a further issue regarding a sponsorship sign. There seemed to be a new issue every week. The claimant felt frustrated and believed her treatment was due to their personal relationship. She met the CEO on June 19<sup>th</sup> 2008 and asked him if they could forget about the whole thing, as it seemed to be personal. He told her that she was never to bring it up again and that she was sacked. He said that she would never work in the town again and that he would plaster her name on the Internet. He gave her three options; to leave quietly and get a good reference, be dismissed if she went to speak to a solicitor or trade union representative, or to speak to two other members of the board.

On Monday, June 23<sup>rd</sup> 2008, the CEO asked her and the CPO to come to a meeting. The CEO said that the two board members did not want to speak to her and he told her to choose from the other two options. The claimant asked to think about it and the CEO left her with the CPO. She denied that she ever threatened to take company files. The claimant rang the CPO the next day to say she was unwell. She got a doctor's certificate and met the CPO on the road to give it to him.

The claimant returned from sick leave on June 30<sup>th</sup> 2008. She met the CEO and CPO around 11am. The CEO asked her what she had decided on. She told him that she had been to a solicitor and he told her that she was dismissed. He followed her while she packed her belongings and then gave her a cheque and cash from his wallet. She went home and a letter arrived later that day stating that she had been dismissed for gross misconduct. She gave evidence of her loss.

During cross-examination the claimant agreed that trust was important in her position. She disputed saying that the €50,000 was dependent on the verbal warning being removed. She did not recall saying that the €50,000 would go to her, or that the local businessman told her she could keep the money if she left. She did not believe that she had that power over the local businessman. The claimant reiterated that the warning was never withdrawn. She denied ever saying that she was going to leave or that she was going to take files with her. She contended that she and the CPO spoke about the options given to her and that they were both confused. She contended that afterwards she worked at another club in a voluntary capacity and only received expenses.

## **Determination**

The Tribunal, having heard the evidence in this case, have decided that the claimant has been unfairly dismissed. The reasons for this finding of the Tribunal are that the respondent failed to implement any or any fair procedure in dismissing the claimant, the respondent had not given the claimant any relevant contract of employment and the Tribunal determines that the claimant was dismissed by reason of the ending of the personal relationship between her and one of the Directors. Another factor in coming to this finding was that the Director had acted as adjudicator in the claimant's dismissal when he had a personal interest in the matter contrary to the "nemo iudex in causa sua".

The claim by the respondent that the claimant had acted improperly by withholding the procurement of a donation of €50,000 is not accepted by the Tribunal because the said donation was paid to the club in April 2008 while the claimant was dismissed in June 2008.

The Tribunal awards the claimant €40,000 (forty thousand euro) Unfair Dismissals Acts, 1977 to 2007.

The Tribunal heard evidence that the claimant received payment in lieu of notice and therefore the

claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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