

## **EMPLOYMENT APPEALS TRIBUNAL**

### **CLAIM OF:**

### **CASE NO.**

EMPLOYEE

- claimant

UD357/09

### **Against**

EMPLOYER

- respondent

### **under**

## **UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. K. T. O'Mahony B.L.

Members: Mr P. Pierce  
Ms K. Garvey

heard this claim at Dublin on 5th October 2009, 1st December 2009, 2nd December 2009 and 4th December 2009.

### **Representation:**

Claimant Ms Niamh McGowan B.L. instructed by Mr Philip Clarke, Ledwidge, Solicitors, 12 Adelaide Street, Dun Laoghaire, Co Dublin

Respondent: Mr. Tom Mallon B.L., instructed by Mr. Peter McInnes, McDowell Purcell, Solicitors, The Capel Building, Mary's Abbey, Dublin 7

The determination of the Tribunal was as follows:-

This being a case of constructive dismissal the onus of proof falls on the claimant.

### **Claimant's Case:**

The claimant commenced employment with the respondent on 2 September 2002 as a legal secretary in the Banking and Financial Services/Tax Department. She also did work for some fee earners. She reported to LF who became a partner in the firm within a year of the commencement of her employment with the respondent. Up to early December 2006 they had a particularly good relationship.

In the initial 7/8 months she felt she was being bullied by her colleagues on a daily basis: they inter alia excluded her from their conversations, ignored her morning greetings and sneered and

whispered to each other behind their desks. When she realised that this was not a passing phase she spoke to the HR Manager (HRM) on a number of occasions about this. She found it hard to concentrate during the day and worked late in the evenings. She had never been asked to put her complaint in writing. One and half years on her colleagues moved to another floor in the building and this resolved matters for her.

She attended college from 2004 – 2006 and qualified as a legal executive. LF had needed a secretary with a legal diploma. However, another girl (AG) was taken on to do legal executive work for the team. The claimant was stunned. She had not been informed that AG was joining the team. She had worked on the team for four years and had never been asked to do legal executive work.

In early December 2007 the claimant objected to a VHI questionnaire, circulated in the firm, because she felt that it was far too personal and invasive and she refused to complete it. She believed the information supplied would be shared with other insurance companies and this would infringe on her personal circumstances. The claimant maintained that her objection to the questionnaire triggered a reaction against her giving rise to much of the following.

On 11 December 2006 the claimant approached SK (another legal secretary) alleging that she had acted inappropriately to members of staff and in particular to JC and suggested that they both go to HR about it but SK refused. Shortly thereafter the Director of Personnel (DP) came to the claimant's desk and asked her if she had an issue. She explained the situation to DP. The following day LF invited her to his office where he informed her that he had spent one hour on the phone talking to HRM and DP who had told him that she had completely lost the head with SK the previous day in an open area. She was horrified that LF accepted what he had been told. He appeared not to listen to what she had to say. She sent an email to HRM, DP and SK inviting them to a meeting on 21 December 2006 to discuss "the horrendous allegations" made against her. However, HRM called her to a meeting on 20 December and informed her that SK was dropping her complaint. The claimant denied that she was the aggressor. Being aggressive was not part of her personality.

The claimant subsequently discovered in July 2008, through an application under the Data Protection Acts that SK and another colleague (AC), who witnessed the incident, had been requested to give written reports on it to HRM. The claimant was shocked at the allegations in the reports and denied using bad language or raising her voice. She believed the two written statements furnished to HR were not a correct representation of what had happened. While LF asked her to apologise she was reluctant to do so. LF felt that such behaviour was most unlike her.

In 2007, at the claimant's request an assistant had been assigned to her. There had been difficulties in their relationship and some six months on the assistant requested a transfer. After SB's departure the relationship between LF and the claimant became more strained. Two fee earners were allocated to another secretary to relieve the pressure on the claimant.

Around this time LF commented to her that he thought that she was bored and losing interest and informed her that the position of Data Room Manager may become available. She was prepared to apply for the position but wanted to remain answerable to LF. When LF and HRM discussed the position HRM felt it would not be suitable for the claimant because it might affect her flexi-time. HRM had not discussed it with the claimant and she was devastated. She was now working for someone who did not want her and HRM was unwilling to allow her to get out of the situation. HRM had made a decision about her job without consulting her. She did not raise it with HRM

because there was no point.

During the course of the team meeting on 20 November 2007 when the claimant could not give LF the cas number of a file LF banged his fist on the desk and told her it was a fundamental duty of hers to know it. The claimant was stunned and speechless. After the meeting she knew she could not continue working for LF. She sent him a detailed email about filing. He did not reply but forwarded her email to HRM. She could not approach either HRM or DP about the incident.

Following the meeting on 20 November 2007 she applied for a transfer and asked that it not be mentioned to LF, as she wanted to inform him herself. She informed GT (the person responsible for transfers) that she was not interested in a word processing or float secretarial position.

The claimant was asked to attend a meeting on 22 November 2007 with HRM and LF to discuss working relationships in the group and her request for a transfer. She was informed that it would not be a disciplinary meeting. She only had half an hour to prepare for the meeting. VB accompanied her to the meeting. It was a very tense meeting and LF was extremely angry. There was some mud-slinging between them. The claimant did not want her transfer discussed in the presence of LF. He said to HRM that keeping the claimant in the group would be damaging to the business. LF left the meeting. Her transfer options were discussed and the only two positions immediately available were one in WP and another as float secretary. She agreed to think about the two offers. She was out of work on sick leave the following week but left a voice mail in the HR department saying that she had decided to accept the WP position. VB, who accompanied the claimant at the meeting was the note-taker at it. The claimant felt that there were omissions in the notes and other points needed clarification.

On her return to work she started in the WP department. The supervisor (AK) there understood that she was there on a floating basis but the claimant informed her that this was now her permanent position. This occurred because HRM had failed to supply the correct details to AK. A number of emails passed between HRM and the claimant as to the precise agreement reached on her position at the meeting of 22 November. On 6 December she requested a reference from HRM. Further emails passed between them on this and culminated in a meeting on 14 December 2007 where the claimant's issues including her historical issues were discussed. These included inter alia: the incident with SK and all matters arising from that; the fact that she had not been notified of SB's transfer out of the section (it was the respondent's case that SB was very upset and wanted to be moved immediately); and, her relationship with LF. The claimant indicated that she did not intend remaining with the respondent.

According to the claimant it was the case of "follow your nose" in the WP department and it was like starting a new job but she carried on as best she could. She did not receive induction training. She requested training and advice from AK on several procedures. Information on the procedures was forwarded to her by email. Between December 2007 and January 2008 the claimant was suffering stress as a direct result of work.

On 14 January 2008 the claimant attended a meeting with HRM concerning her level of absences. There had never been an issue before with her sick leave. HRM offered her the services of the company doctor or EAP but the claimant thought this unnecessary as her absences were due to work related stress. She felt pressurised. HRM informed her that she would be monitoring her attendance levels over the following weeks and if her attendance level did not improve she would invoke the disciplinary procedure.

In June 2008 the claimant decided to discontinue completing timesheets. She felt it was an intrusive and time-consuming procedure. It became apparent to her that she and one other colleague were the only two staff completing timesheets although she had been told that all in WP were filling them in. On 10 June the claimant informed her supervisor of her decision. AK asked for the reasons for her decision. That evening AK sent an email to the night shift workers asking them to recommence completing the timesheets. The claimant was called to a meeting on 12 June to discuss her position. The claimant sought an agenda for the meeting. By email of 11 June HRM informed her that timesheets and the difficulties experienced by her attitude around teamwork and client focus would be discussed. Following a further request HRM amplified the issues as follows: 1. Not demonstrating the Teamwork Value – eg helping with cover at start, finish times and breaks. 2. Not demonstrating the Client Focus Value – attitude to training on internal client care, email to [AB] following document issues. 3. Refusal to complete timesheets. The claimant indicated that she would be recording the meeting and would be accompanied at it. In the event she chose not to be accompanied at the meeting because of previous poor experience. The meeting was recorded. HRM stated that the purpose of the meeting was to discuss the issues already identified to the claimant and it was not a disciplinary meeting. The claimant prepared her own agenda which itemised: 1. Timesheets 2. Flexitime 3 Training 4 Email to TH 5 Report from JB re Internal Client Attitude 6. Issues in respect of leaving times.

There was much discussion at the meeting on the claimant's flexitime. It had not been discussed at the time of her transfer into the WP department. The claimant was insisting on maintaining her flexitime but if asked she would help out to cover on the odd days. At that meeting HRM informed her that if she refused to complete timesheets it would be a disciplinary matter. The claimant indicated that she would not complete the timesheets.

On 16 June the claimant made an access request of the respondent under section 4 of the Data Protection Acts. On 17 June the claimant was asked to attend a disciplinary meeting on 23 June to discuss her refusal to complete timesheets. The claimant's request to have an external person at the disciplinary meeting was refused on the basis that it was not provided for in the respondent's procedures but the claimant was told she could have a work colleague with her at the meeting. The disciplinary meeting was postponed to allow the parties to have their transcripts of the meeting of 12<sup>th</sup> June prepared and exchanged.

The disciplinary meeting was held on 7 July 2008. The claimant was informed that if she continued to refuse to complete the timesheets she would be subjected to further disciplinary action such as a final written warning. The claimant indicated that she would not complete the timesheets and told HRM that she should get the series of disciplinary warnings out of the way. The claimant considered completing the timesheets would be intrusive and inhuman and accused the respondent of micro-management. HRM told her that her continuing refusal to fill in the timesheets fell into the category of insubordination in the disciplinary policy. Following the meeting she was on sick leave for a week, due to stress. On 14 July a copy of the written warning was sent to the claimant's home. On her return to work on 15 July 2008 she felt she was psychologically beaten to a pulp and emailed HRM saying that she would complete the timesheets. She did it to get RM and AH "off her back". At the time of sending the email to HRM she had not seen the latter's email to her informing her that a copy of her written warning had been sent to her home the previous day and that she would give her (the original) letter of warning when she (the claimant) was free. She chose not to appeal the written warning. She had not a lot of faith in company procedures. She felt defenceless.

While on holidays in July 2008 her desk had been given to MM who was returning from sick leave

and she had to share a desk with another colleague who worked on the later shift. As this resulted in her having to vacate her desk by 6.20/30pm. she could not take full advantage of her flexi time or use the desk for her full contractual hours. On 30 July 2008 she e-mailed both HRM and AK to this effect and added that it was direct violation of her employment contract. This arrangement had not been discussed with her in advance. She could not cope any longer and applied for a position in Private Client. However in early August 2008 she withdrew her application for the position in Private Client because she had been offered an excellent position externally. By e-mail dated 11 August 2008 she tendered her resignation with notice to expire on 8 September 2008. On 21 August 2008 she wrote to the Managing Partner (LQ) and made a complaint about HRM and AK. The firm decided to carry out an investigation into the complaint. She was concerned about the person assigned to conduct this investigation and chose not to attend when invited to do so.

In relation to the completion of timesheets, she had been told that it was the norm in January 2008 for the whole WP department to complete timesheets. She only became aware in June 2008 that only she and another employee had been completing the timesheets. She decided to fill out the timesheets having received a written warning. She had never expected to receive a written warning. She tendered her resignation when she had obtained another job.

### **Respondent's Case:**

CN witnessed the incident that occurred between the claimant and SK on 11 December 2006. MOR asked her to type up a statement on it. She assumed this would be confidential. She deemed the statement to be an accurate reflection of what had occurred on the day. The claimant used very strong language to SK and was very angry. CN clearly remembered seeing the claimant pointing her finger at SK and insisting that SK accompany the claimant to HR. SK did not defend herself. CN said she may have laughed at the end of the incident but this was in nervousness. CN classified the interaction between SK and the claimant to be inappropriate and said that the claimant was crossing the line and her behaviour was totally unjustified. CN had not discussed her statement with SK and she had never seen SK's statement. CN had no further communication from HR after she furnished the report. CN was surprised and shocked when she received an e-mail from the claimant on 24 August 2008 asking if she could print off her statement and sign it. HR had not informed her in advance that the claimant required a copy of her statement.

SK was working part-time from 9.00am to 1.00 pm and shared a desk with JC who worked on the later shift. On 11 December 2006 she worked until around 2.00 pm to try and finish a document, which had not been completed the day before. She asked JC if she could try and finish the said document. She recalled being approached by the claimant and being involved in a tirade with her. The claimant pointed her finger in her face and was very angry. SK was taken aback and deemed this to be out of the blue. The claimant was disgusted with the way SK spoke to JC and insisted that they both go and sort it out in HR. She told one of the bosses about the incident and met LS on the stairs and mentioned it to her. HRM rang her the following day and asked her to type up a statement on the incident. She did not make a formal complaint about the incident. The only thing she said to the claimant during the incident was to ask her, "Are you threatening me". SK was dazed at the claimant's aggression and was shocked and felt disorientated. She wanted peace in the department and everything to go away. SK had respected the claimant but after this incident she kept her distance from her. She did not show her statement to anyone.

HRM is the HR manager and is also responsible for the secretaries. It was never her intention to ever misrepresent facts to the claimant. Early on in the claimant's employment she had spoken to HRM a number of times about the difficulties she was encountering with her colleagues on the

ground floor. HRM explained the formal and informal procedures for lodging a complaint to her. The claimant did not initially want to proceed with a complaint. However at a later stage she was considering making a formal complaint but the girls moved to another floor and she did not proceed with it. One of those girls had also made complaints of a similar nature against the claimant at that time. The claimant made no complaint at the time about HRM's handling of the complaints.

On 12 December DP (the Director of Personnel) had told HRM about the incident of 11 December 2006 with SK. She asked both SK and CN to furnish a statement of what had happened. She spoke to LF about the incident. It was not unusual to speak to the partner before speaking to the subject of the complaint. However LF did not want the matter to be pursued. SK also indicated that she did not want to progress the matter formally and this was formally communicated to the claimant at a meeting. HRM considered that this brought closure to the matter. The statements were not placed on the claimant's file but when the request under the Data Protection Acts was made they were found on the hard drive and were furnished to her. HRM did not orchestrate the making of thereports by CN and SK in December 2006 because of the claimant's complaints about the VHI questionnaire. In fact she was not aware of that issue when she asked them to write their reports and she only became aware of the VHI issue at the meeting of 14 December. She subsequently spoketo both SK and JC about their working relationship.

In 2007 SB, a junior secretary, was employed to assist the claimant and the team. HRM had involved the claimant in discussions around SB's appointment. Both SK and the claimant had made allegations of bullying against one another. At the end of SB's probationary period the claimant secured assessments from the fee earners. The claimant stated that SB had been reluctant to do filing and to take direction from her and felt that SB should move on. SB was not contented in the position and was moved out of it.

Following the team meeting of 20 November 2007 GT, who had responsibility for internal transfers, informed her, as is her responsibility, that the claimant had requested an internal transfer because her relationship with LF had broken down and she could no longer work for him. LF also forwarded her an email stating that he no longer wanted to work with the claimant. She informed him that the claimant had requested a transfer. A meeting was arranged for 22 November 2007 to discuss the claimant's request for the transfer and the breakdown of their working relationship. When a secretary working in an area for a number of years wishes to move on it is usual to have a meeting about it. HRM totally disagreed with the claimant's version of LF's behaviour at that meeting. HRM had sat next to him and he was neither angry nor aggressive and he did not raise his voice.

When LF left that meeting two positions, one as a float secretary and one in the WP section were discussed, because these positions were immediately available. While HRM was aware that the claimant had expressed a wish not to work in either section she offered them to her because they were immediately available and she needed to escalate the transfer because of the break down in the working relationship between the claimant and LF. The claimant indicated that she wanted to think about it and then decided to accept the position in WP. Other alternatives should have been followed up later by GT with the claimant, but were not.

Having received a request from the claimant for a reference HRM felt it was necessary to hold a meeting. While the meeting of 14 December 2007 was scheduled to discuss the claimant's request for a transfer, other issues were also discussed. The claimant maintained that she (HRM) had "a knife in my back". HRM was surprised at the insinuation that she had a vendetta against the claimant and assured her that she did not and that she only wanted to resolve the issues that had

arisen and move on. She did not have any problem with the claimant, who had been a good worker and she valued her opinion. It was not unusual that fee earners/solicitors had not returned assessments from 2005 on to HR. Several reminders had been sent to them to forward them on.

HRM asked the claimant to meet with her on 14 January 2008 concerning the level of her sick leave from work. The meeting was a standard return-to-work meeting. The claimant had an excellent record in previous years but she was absent 16 days over 9 occasions in 2007. The respondent has a duty of care to its staff and she offered/advised the claimant of the opportunity to attend the company doctor or avail of the Employee Assistance Programme, which provides a counselling service. The claimant was advised that her attendance levels would be monitored over the following weeks. At the conclusion of the meeting HRM asked the claimant to contact her if she wanted to accept the employee assistance at a later stage.

HRM was aware the claimant was having difficulties integrating into the team and had problems around a number of issues. In June 2008 the claimant refused to continue completing timesheets. HRM considered this to be quite a serious issue. She asked the claimant and AK to attend a meeting on 12 June 2008 at 11.30 a.m. She furnished the claimant with an agenda in advance of the meeting and the claimant also had her own agenda. The purpose of the meeting was to identify some of the claimant's issues. The meeting lasted around two hours and the claimant participated fully in it. Its purpose was to discuss the issues already identified to the claimant and it was not a disciplinary meeting. One of the issues discussed at the meeting was a complaint in late May 2008 by TH. He had complained to AK about some errors in a document the claimant had prepared from dictation. The claimant sent an apology by email to him and copied it to HRM. The email concluded as follows: *"In order to prevent such an occasion repeating itself I will be happy to leave any of yours or [P's] dictation for other secretaries/typists to handle in future. I have copied [HRM] in on this email in case you would prefer to take the matter further...."* The respondent found this wholly inappropriate. It was indicated to the claimant that if she continued to fail to complete the timesheets that the disciplinary procedure would be invoked.

The claimant was well capable of putting her concerns and issues across at the meeting. HRM explained to the claimant that the purpose of completing the timesheets was about gathering reliable information for management and while other departments may have other means of gathering information the completion of timesheets is how it is done in the WP department; it is not about lack of trust in employees or managing people. Timesheets were in existence before she commenced with the respondent but for some reason the night shift had discontinued them around 18 months previously. Once this was discovered she asked AK to email the night shift workers to recommence completing them and they did. As the claimant refused to accept the company's point of view and indicated that she would not fill in the timesheets it then became a disciplinary matter.

In order to integrate into the WP section which worked on a shift basis it would have been helpful if the claimant could have adjusted her hours to assist with cover for the section in particular at break time but also at start and finish time but little headway was made on this. HRM denied that the issue of the completion of timesheets was a conspiracy to get rid of the claimant. The claimant was insisting that she would not continue completing timesheets. She was refusing to carry out a reasonable instruction. In HRM's view once there was a refusal there was no alternative but to invoke the disciplinary process. During the meeting HRM reminded the claimant that there was a grievance procedure if she had complaints.

The disciplinary meeting took place on 7 July 2008. It was made clear to the claimant that the

reason for the meeting was her continuing refusal to complete the timesheets. By this time everyone was completing them. HRM indicated to the claimant that the appropriate sanction for her continuing failure to comply with the instruction was a first written warning. HRM told her that her continuing refusal to fill in the timesheets fell into the category of insubordination in the disciplinary policy. The claimant maintained her position. Following the meeting HRM issued her with a letter of written warning. Following the meeting the claimant was on sick leave for a week, due to stress.

HRM had never raised her voice to the claimant or acted in an inappropriate or excessive manner towards her. HRM contended that the claimant was a very competent and very experienced worker. She had no issue with her work. Had she not resigned it was possible she would have been appointed to the private client job. HRM had been informed that the claimant did well at the interview for the private client position. There was no reason for the claimant to leave the firm. Since the claimant's departure from the firm existing staff agreed to an 8% decrease in their salaries.

There are two shifts in the WP department and they share desks. An employee was returning from sick leave while the claimant was away on holidays and the claimant's desk was allocated to her so she would be near to AK and another employee who could give her assistance. She could not see an issue with the claimant's desk move during her holidays in July 2008 and saw no need to discuss it with her in advance of her holiday.

It was not exceptional that assessments had not been done on the claimant for three years. Some partners had not returned assessment forms for years. The respondent would send reminders about the assessments to the fee earners but they may not still return them.

It was LF's evidence that the claimant had been an excellent secretary, competent and organised. Their working relationship was very good. They socialised together and the claimant was a guest at his wedding.

Twice in her earlier years with him he was aware that there were difficulties in her working relationship with other secretaries. On both occasions the problem as presented to him was that a particular secretary was a chatterbox and in the second case two secretaries were talking too much and distracting her. In the former case the claimant had asked for a desk move but it did not happen.

In the latter case he spoke to the partner in charge of secretarial seating arrangements and the claimant was facilitated with a desk move when it was possible without upsetting others. The claimant had never described her problems as being bullied to him.

Though the claimant had not been furnished with an assessment since 2005 appraisal meetings had taken place with her. He encouraged the claimant to attend a legal executive course, as he believed she was an intelligent person and that it would be beneficial to her and progress her career in the long term. There had been no promise that she would be appointed as legal executive once qualified. AG who joined the team was not in fact a legal executive, she had a degree and joined the department through its summer programme and is now serving a training contract. Although called a legal executive she was not one.

In early 2007 he held a meeting with the claimant and discussed her performance. He recommended her for the highest-level bonus and salary increase. Her salary increase was triggered by the recommendation.



On the morning of 12 December 2006 DP and HRM spoke to him about the incident by the tea station the previous afternoon. He spent forty-five minutes discussing the situation with them and how it could be prevented from progressing into a formal disciplinary matter. It was agreed that he would speak to the claimant. He discussed with her the allegation that had been made: her use of inappropriate language, the fact that HR had taken it seriously, that it could be formalised and lead to disciplinary action. He felt the best option for the claimant was to apologise to SK and suggested this to her. He felt that if it progressed into a disciplinary matter it could damage the claimant's standing in the firm and that she might decide to leave. He also feared that if she received a warning she would leave. He did not want her to leave. He was surprised that the claimant had summoned a meeting for 21 December 2006 to press the matter. He had assisted the claimant in a previous difficulty and thought he could resolve this as well. After that incident the claimant continued to work for him for a year. During that year their damaged working relationship repaired itself to the extent that social outings continued. He never said that matter should be brushed under the carpet.

LF chaired the weekly team meetings. The claimant was integrated into the team. At the team meetings the practice is that each lawyer discusses his or her work so as to familiarise the team with it in case something would arise requiring action to be taken. In the course of the meeting of 20 November 2007 while a solicitor was giving her update he noticed the claimant conspicuously staring out the window. He commented that she should be taking notes of the particular file in question and she responded that she should not and that she had never taken notes before. After some further comments he felt their discussion was counter-productive in that forum and continued with the meeting. He gave some thought to what occurred at that meeting. Approximately, forty minutes later he received an email from the claimant enquiring about filing and cas references. He was somewhat surprised at this as he had felt justified at the direction he had given at the meeting. He felt that the tone of the e-mail was unnecessarily sarcastic. He immediately forwarded the e-mail to HRM.

He was not furious at the team meeting on 20 November 2007. Throughout the interchange with the claimant he was calm and firm and neither lost his temper nor shouted. He did not accept that he had monitored the claimant's work after that meeting. The claimant took formal notes, as required at team meetings; this is why she brings a note pad.

Because of the sarcastic tone of the e-mail and the claimant's tone at the meeting he felt he needed to consider their working relationship. He telephoned HRM to discuss the issues and the possibility of the claimant getting an internal transfer. The claimant's performance had slipped in autumn 2007 and there had been a number of incidents; he thought that perhaps she might have been bored and in need of a change after their five years working together. He was informed that the claimant had requested a transfer. He had not been aggressive and he had not banged his fist on the table. He would be happy for her to be elsewhere within the firm.

LF attended the meeting of 22 November 2007 about the claimant's transfer. The claimant made the point that their working relationship was defective. She questioned the instruction he had given to her at the meeting two days earlier. The claimant had found sent items in his e-mail box, which he had sent to HR. He felt wounded that she had gone into his sent items for personal purposes. He recalled that it did not make sense that they work together. He had never said that she was damaging to the business. He had never been asked for references before but if another partner requested one from him regarding the claimant, he would have said that the claimant was a competent and capable secretary and that he was happy for her to work in the firm. It did not make business sense that she and he work together. It was inappropriate that the claimant should remain

in the section as they both needed a change. If the claimant wished to return to the company he would not block her from doing so.

As he felt the claimant had become demotivated, he thought that the position of Data Room Manager would be interesting for her if it could be created. The claimant seemed excited about it. He spoke to HR about it. The comment passed by HRM and relayed by him to the claimant was that the claimant's terms and conditions could pose obstacles as there would be no flexi time and the pay scales would be lower. He felt the need for this new position and that it would improve her boredom.

While it is HR's function to decide on HR matters it is the practice of HR personnel to consult partners on HR matters.

A solicitor, who was present at the team meeting on 20 November 2007, confirmed that as a solicitor was reading out her update LF stopped her and asked the claimant why she was not taking notes. She replied that she did not feel it necessary. When LF told her that the purpose of her attendance at the meetings was to take notes she told him that she does not usually take notes. It went on in this vein back and forth. LF had been firm with the claimant, he was not furious and did not bang the desk.

### **Determination:**

In a case of constructive dismissal the onus of proof rests on the claimant to show that because of the conduct of the employer, the employee was either entitled to or it was reasonable for the employee to terminate the contract of employment.

The partner for whom the claimant had worked between September 2002 and late November 2007 considered her to be an excellent, competent and well-organised secretary with whom he had a good relationship for five years and they socialised together. Early in her employment the claimant complained of being bullied by some colleagues. However, she did not present her problem to her immediate boss as bullying. The Tribunal is satisfied that HRM was prepared to deal with the issues in the appropriate way but it was resolved by other means. The Tribunal notes that there was also an allegation of bullying against the claimant but that too had not been processed by the complainant.

The respondent set about investigating the SK incident of 11 December 2006 but discontinued the investigation when SK withdrew her complaint. While it was reasonable in the circumstances to discontinue the investigation at that stage, the respondent, not having given the claimant an opportunity to give her version of the incident, ought to have ensured that not only the hard copies of the reports by SK and CN on that incident but also the copies on the hard drive of the computer were deleted. The Tribunal accepts the evidence of SK and CN as to the facts of that incident.

While the evidence shows that there were problems between the claimant and SB the respondent was remiss in not having introduced SB to the claimant.

The relationship between the claimant and the partner for whom she worked began to change in 2007. The Tribunal accepts the partner's version of what occurred at the meeting of 20 November 2007. HRM acted with admirable alacrity in convening a meeting, within two days of the claimant's request for a transfer, and offering her the two positions available at the time. The respondent cannot be blamed if the claimant's new position was a demotion for the claimant.

The possibility of a position as Data Room Manager was considered by the claimant to be an attractive proposition. The Tribunal cannot accept that the comments passed by HRM to LF, about the claimant's possible attitude to the position, constituted an unwillingness by HRM to allow the claimant change jobs. It was always open to the claimant to discuss this position with HRM.

It was reasonable for the claimant to initially decide not to complete the timesheets in that most workers in the WP department were not completing them as the practice had fallen by the wayside in the night shift. However, when an instruction was given by AK to the night shift workers in the department to complete them, the claimant's continuing refusal to follow an instruction to complete the timesheets constituted serious misconduct. Invoking the disciplinary procedure and issuing a written warning were reasonable in the circumstances.

The Tribunal notes the long discussions between the claimant on the one hand and HRM on the other on the issue of the claimant's flexitime.

The Tribunal feels that the respondent could have approached the issue of changing the claimant's desk in a more tactful way.

The claimant failed to satisfy the Tribunal that a nexus existed between her opposition to the VHI questionnaire and the events herein that followed on thereafter.

Having considered all of the above and the totality of the evidence adduced the Tribunal unanimously finds that the claimant failed to discharge the onus of showing that it was reasonable for her in the circumstances to terminate the contract of employment. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

