

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE – claimant

CASE NO.
UD615/2009

against

EMPLOYER – respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms M Levey BL

Members: Mr P Pierce
Mr G Whyte

heard this claim at Dublin on 29th January 2010, 15th April 2010 and 16th April 2010

Representation:

Claimant(s): Ms Joanna Howells-Roder BL, instructed by:
Ms Elizabeth Mara,
Sor Mullany Walsh, Solicitors, 74 Pembroke Road, Dublin 4

Respondent(s): Mr Leonard Parker BL, instructed by:
Mr Seamus Bowe & Mr Sean O'Morain,
An Post, Solicitor's Office, General Post Office, O'Connell Street, Dublin 1

The determination of the Tribunal was as follows:

Claimant's Case:

The claimant gave evidence that he commenced his employment with the respondent company in January 1964 as a clerk. He worked up the ranks to Superintendent in the Cash Remittance Unit. He reported to a number of Managers, enjoyed his job and had no problems.

It was a very busy section and over the years the workload had increased. Security was a primary concern. In early September 2008 a large sum of money went missing in the office but was later located. The staff member who normally oversaw this duty was on sick leave at the time. The claimant reported it to one of his managers (hereafter known as FQ). The Investigation Branch took over and interviewed all staff, including the claimant, which took over 2 hours.

On Thursday September 11th 2008 another of the claimant's managers (hereafter known as DRM) told him to go to the Investigation Branch. He was informed that two of his staff were to be suspended and he was asked to escort them off the premises. As a consequence he was short of staff. He informed DRM who informed him that FQ would be over. Two staff members were supplied but they had little knowledge of the workings of the section and he was asked to train them in. This was not normal practice, clerks' trained clerks, overseers trained overseers and this could take up to four weeks. The claimant found it a very stressful day.

On Friday September 12th 2008 he spoke to DRM who asked him to come to work at 5.30 a.m. to lend a hand. This was not normal practice as he did not usually attend until 09.15 a.m. He opened according to normal practice. After a while working on his own, despite a colleague present that did not help out, FQ arrived but did not lend a hand. FQ was trying to implement new structures and questioned him that morning as to how they would work. He was unaware of these new proposals. FQ informed him that DRM would be over and left.

DRM arrived at 12.00 p.m. The claimant mentioned to DRM that what had occurred the previous day was terrible and informed DRM that FQ had been in the unit but did not help him. DRM shouted, "You'll do whatever FQ tells you". He was astonished and could not respond. He asked for someone to train the new staff and was told "Don't tell me you don't know every duty in the section, you train them". He did not know what to do, was very upset and felt that if he did not train the new staff he would be suspended. He felt DRM's demeanour towards him was atrocious. DRM mentioned something, said he would be back at 2.00 p.m. and left.

Over lunch the claimant thought about the situation and wondered why should he put up with the very shocking and stressful situation. In the last 20 years of his employment no one had been suspended from the company and now two had, from the unit he supervised. He wrote a note of his intention to retire:

"Manager,

Because of extreme pressure over the last few days I wish to retire as of now.

*Signed
(Claimant) 12-9-08"*

He handed the note to DRM on his return from lunch plus his keys and word card. He informed him that he was leaving. DRM was surprised and said they would all go for a drink. DRM said that he would hold onto the claimant's note over the weekend while the claimant thought about it. The claimant informed his shocked colleagues why he was retiring. He told the Tribunal a number of times that he had no intention of retiring until just before his 65th birthday.

On Monday September 15th 2008 he received a letter from the respondent. He was very annoyed at its contents as he felt they had glossed over what had occurred and were not taking him seriously. There was "no hint of an apology" which made him feel even worse. DRM's letter requested that he confirm or reverse his decision by close of business on Wednesday 17th September 2008.

The claimant replied to DRM's letter on Tuesday 16th September 2008. He began by stating that on the previous Friday morning he had had no intention of retiring. He had intended to work until before his 65th birthday. He explained his difficulties in having to train an overseer and a supervisor grade II while doing his job at the same time. He stated how upset he was to have been

spoken to in such an aggressive manner by DRM and that after that incident he could no longer work for him again. He stated that he could see no alternative but to retire and that this was his sole reason for doing so. He stated that he felt he had no alternative. He returned the signed retirement application form with the letter. His employment ceased on September 19th 2008.

When asked he said he could not remember if he had ever refused in the past to carry out a duty. On October 8th 2008 he wrote to the CEO informing him of the situation. On October 18th 2008 he received a response informing him the HR Manager would contact him. When asked he said that he was aware of the company's grievance procedure but was unsure what section dealt with his particular grievance. He felt that there was no investigation of his complaints. He was not given an update of the company's grievance procedure or told how to make a complaint.

He believed that the 1990 dispute resolution document the 'MacNeill' agreement, which he had on his desk, applied to disputes between trade unions and the company and was not for individuals with a grievance.

He had a meeting two HR managers, & his representative in January 2009. He contended that he had not asked to be paid compensation, but wanted to point out that he had lost €40,000 per annum because of how DRM had treated him.

During cross examination the claimant agreed that the employee brought in to cover the supervisor II role had been trained in the role previously, but he contended that he had not performed the duties in at least a year and had asked for re-training.

The claimant agreed that he previously had a good relationship with DRM and this was the first time that he had been treated in that manner.

The claimant did not ask for Trade Union advice as he felt badly served by them on a previous occasion. He preferred to represent himself. He contended that he never saw the 2004 'dignity at work' document while he was an employee. It was stated in a letter that he could avail of the services of the welfare officer, but he believed that it referred to retiring.

The human resources manager for the collection and delivery area gave evidence that she accompanied general human resources manager to a meeting with the claimant on January 27th 2009. She only became aware of the claimant's situation before that meeting. She stated that the McNeill procedure was primarily used between the trade unions and the company, but it was custom and practice in the company to use the same structure for individuals whereby a complaint is made to the immediate manager and thereafter taken up the ranks if there is a difficulty.

New managers were trained in the grievance procedure when they began. The claimant was already a manager when the witness commenced her employment and she was therefore unaware whether he had completed such training. The witness was not involved in training.

During cross-examination the witness stated that the 'Dignity at Work' document was sent to all staff. If an employee has a difficulty with their direct manager they can leapfrog to the next level with their grievance.

Respondent's Case:

The Dublin regional manager (DRM) gave evidence that having commenced his employment in 1967 he had taken a similar career path to the claimant. They were friends and this was the first time an incident such as this had occurred. He did not work with the claimant on a day to day basis.

The week after the staff suspensions a new security company was being brought in for cash deliveries and it was necessary for all the staff in the unit to be trained. Of the two staff replacements one had previously trained in the role of supervisor grade II and the other had cash experience, so it was seen as a workable solution. He agreed that he made the comments to the claimant as described. It was a fraught situation that day.

He was shocked when he received the claimant's note stating that he was going to retire. He did not think he was going to follow through with it. He did not want him to retire. There was no question of suspending the claimant. There was no allegation of wrong doing against the claimant. If the claimant could not train the staff he would have looked at the situation again, but he believed that the situation was resolved.

The witness consulted the HR Manager on the drafting of both of the letters he sent to the claimant. He hoped the claimant would return to work the following week.

During cross-examination the witness stated that giving the claimant until Wednesday 17th September 2008 was sufficient time to contact him about his final decision. He enclosed the form for retirement so that the claimant's retirement entitlements could be processed without delay. He told the claimant that he would hold onto his note over the weekend while he thought about it.

The claimant's letter of response surprised DRM. The claimant had stated in his note that he was retiring because he was under pressure and DRM had no idea that he was being accused of anything. He considered the claimant's letter as a complaint against him. He informed the HR department about it and replied to the claimant. In his first letter he had suggested that the claimant could utilise the services of the welfare officer, but he did not remind him of this in his second letter or inform him where he could escalate his complaint. The claimant was also a manager and had dealt with complaints in his own section. He believed that he understood the process. He became aware later that the claimant later wrote to the CEO.

The HR Manager gave evidence that he became aware of the claimant's resignation on Friday September 12th 2008. He was not overly surprised as the claimant had full pension benefits when he reached 60 years old and he was then aged 62. Because of the wording of the note he advised DRM not to accept immediately, but DRM reported that he had already told him to think about it over the weekend. He told DRM to add to the letter that the claimant could contact the welfare officer. He was surprised that the claimant responded so soon. He saw the letter that DRM drafted in response to the claimant's letter. He believed that DRM had responded to the claimant's concerns adequately and he felt that there was no further HR role.

When the claimant wrote to the CEO it was referred to the HR Manager. He met the claimant, but at this stage the claimant had retired and was a pensioner. The claimant said that he had not intended to retire until he was 64 and that he was at a loss of €90,000 or €100,000. He wanted to rectify that but he did not ask for re-instatement.

During cross-examination the witness contended that four or five days was enough time for the claimant to consider his resignation. If the claimant had an issue he could have gone to the next level of management, to his trade union or to the welfare officer, but he decided to retire.

Determination:

The Tribunal finds that the dismissal was not unfair. The claimant retired of his own volition and did not reverse his decision in the additional time afforded him to reconsider his position. However, the Tribunal is critical of the lack of engagement with the claimant by the HR department, particularly given the uncharacteristic behaviour of the claimant in suddenly retiring and given that his manager indicated to HR that he did not want the claimant to retire.

Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007, is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)