

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO.
UD727/2009
MN749/2009

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: Ms. K.T. O'Mahony BL

Members: Mr. D. Hegarty
Ms. H. Kelleher

heard these claims in Cork on 24 March 2010

Representation:

Claimant(s):

Ms. Meg Burke BL instructed by
Mr. Robert Baker, O'Donovan Baker, Solicitors,
15 South Mall, Cork

Respondent(s):

Mr. Plunkett Taaffe, Plunkett Taaffe, Solicitor,
St. Patrick's Quay, Bandon, Co. Cork

The determination of the Tribunal was as follows:-

Summary of the Evidence:

This was a constructive dismissal case.

The claimant, a qualified nurse, commenced employment with the respondent in its hospital in 1996. She was made permanent member of staff three years later in 1999. The respondent's 18-bed/10-room hospital was managed by a voluntary Board of Management (the Board) with Dr. L as its Chairman at the relevant time. The matron left the respondent in 2004 and was not replaced. It was agreed that the claimant (who was the senior day nurse) and the senior night nurse would be in charge and they took on extra duties at the time. It fell to the claimant to do the rota.

In or around July 2007 a nursing colleague lodged a complaint against the claimant with An Bord Altranais. Whilst the claimant accepted that the respondent could not take sides she felt that the respondent did not support her at the time by its failure to respond to her solicitor's request for documentation for An Board. Altranais. The respondent's position was that the issue was between two employees and that it would remain neutral. It had been advised not to become involved in a professional competence issue.

The claimant generally did the rota for a week or two in advance but she waited until the night staff would let her know their availability. It was sometimes a problem for her because she had to make lots of calls to ensure coverage. On one occasion when she had not done the rota Dr. L telephoned her at home about it. The respondent's position was that there were continuous complaints about the rota from both the day and night staff; there were numerous complaints from members of staff that they were being pushed aside and not being treated equally. Because of the number of gaps in it the rota the system was falling apart. The respondent decided to appoint a supervisor.

In July 2007 the respondent appointed another nurse, NSC, as nurse supervisor. The claimant first heard about this from a colleague over the phone. Several notices were posted up on the premises informing staff of the appointment and stating: "From now on all staff will report to her and all decisions will be made by her from now on". The respondent's evidence was that the notice was posted in only three staff areas and had never been on public display. The claimant understood from the notice that the extra duties including taking bloods, admitting patients and the rota were taken from her. However, she never sought clarification on the matter. The respondent maintained that only the rota was taken from her. SNC only came into work for a few hours most days. SNC was very angry with the claimant for allowing a care assistant off work to baby sit for someone who was attending a family funeral.

On 19 November 2007 the claimant was having difficulties contacting SNC about the admission of a patient to the hospital. The claimant eventually succeeded in making contact with NSC. Even though beds were available, SNC would not allow the claimant to admit the patient, who by this time was waiting in a car outside the hospital. The claimant spoke to Dr. L about the matter and headvised her to talk to SNC again, which she did but SNC just "screamed and roared" at her. Telling the patient that there was not a bed was the hardest thing she ever had to do. SNC called the claimant into the office the next day about the matter and when the claimant told her the patient was dying she shouted a number of times, "We are all dying". The claimant found this a frightening experience. SNC reprimanded her for not having documented the incident and told her to get out and do it. That evening Dr. L and Dr. S (another member of the Board) called her to the treatment room and asked her to get on with SNC. Dr. L's position was that SNC was in charge of admissions and he did not want to become involved in the situation and wanted them to agree matters between themselves. There could not be two people in charge of admissions. The patient was re-admitted to a Cork hospital and was later re-admitted to the respondent's hospital. The claimant admitted that it is not her duty to admit patients.

Since she was no longer the senior person on days, the claimant decided to take Christmas day 2007 off and recorded this in the holiday book. It was her position that for the past 10 years she had worked four hours every Christmas day. Earlier, in August 2007, SNC had told the claimant that she could not have the time off as it was part of her regular duty. In November 2007 SNC crossed the claimant's name off the holiday list but the claimant re-entered her name in the book. On 12 November SNC wrote to the claimant stating her position. It was the claimant's evidence that she was rostered for the full day on 25 December. She felt worn out and humiliated. Her doctor put her off work due to stress for a month and she sent the medical certificate to the Board.

In March 2008 the Fitness to Practice Committee of An Bord Altranais found that there was insufficient cause to warrant the holding of an enquiry into the claimant's fitness to practice. At the claimant's solicitor's request Dr .L informed the Board of this. In his letter to the claimant's solicitor to inform him of his action Dr. L expressed the Board's gratitude to the claimant for her work and dedication to the hospital.

SNC left the respondent and LL was appointed nurse supervisor. On her return from a weekend away on St. Patrick's weekend 2008 the claimant was told not to go in on Monday because there was not enough hours when LL took over from SNC. The administrator informed the claimant of the appointment. LL, who was a qualified nurse in her own country was a care assistant with the respondent until her qualifications came through. The claimant felt humiliated. She gave up shopping because she was being asked how she put up with it. The claimant's position was that names were on the duty sheet according to seniority but LL moved the claimant's name half way down and when the claimant put it back on top LL put her name at the end of both the list of nurses and care assistants. According to the claimant one's place on the duty list does not affect work or pay, "it is just a status thing". She told Dr. L who agreed with her that it was bullying but he did nothing about it. Dr. S's position was that there was not seniority among the nurses; if seniority applied then nurse M should be at the top of the duty list but she is not. Problems with the rota continued while SNC was nurse supervisor and only came to an end when LL took it over when she was appointed nurse supervisor.

While the claimant found SNC to be bad LL was even worse. She could not take any more and in August 2008 she handed in a letter giving several weeks notice of her resignation. She did not tell Dr. L why she was leaving and he did not ask. She told Dr S that she was leaving because of the bullying and harassment but Dr. S did not discuss the matter with her. Dr. S had no recollection of being told by the claimant that she was being forced out because of bullying and harassment. Dr. S and others organised a surprise party for the claimant. The claimant telephoned the administrator to tell him she would not be attending the party. The respondent did not have an agreed retiring age and the claimant's position was that she intended working at least three more years into her late sixties had she not been forced to resign. The claimant had loved the work and had been friendly with the patients and the doctors and everyone there. A collection was taken up for her resignation.

Dr. S visited the hospital almost every day and she sometimes received complaints about interpersonal issues among the staff but when she asked for them in writing she never received any. The claimant's position was that Dr. S had never asked her to put complaints in writing. The claimant agreed that she had full access to both Dr. L and Dr. S. The respondent was shocked to get the letter of 9 March 2009 from the claimant's solicitor. They had considered the claimant to be an excellent nurse.

There was a dispute between the parties as to whether a cheque in the sum of € 500.00 paid to the

claimant was in respect of the €20.00 per week for extra duties or whether it was a payment against expenses incurred.

Determination

In a constructive dismissal case the employee must show that the employer was guilty of a breach going to the root of the contract entitling the employee to treat her contract of employment as terminated and resign or show that the employer's conduct made it reasonable for her resign.

Management's decision not to become involved as between the two employees in the matter before An Bord Altranais was not unreasonable.

Control of rostering and admissions is central to the running of the respondent's private hospital. The rota, when prepared by the claimant was causing serious problems, which generated numerous complaints from the staff. It was incumbent on management to take action to resolve the matter and create a harmonious atmosphere in the workplace. The second appointment to that position resolved the issue. The claimant's evidence was that she was not complaining that she had not been appointed nurse supervisor.

There were interpersonal staff issues in the hospital and in particular the claimant had a problem with SNC. However, by the time of the claimant's resignation SNC had left. The Tribunal further finds that the claimant failed to substantiate her allegation that LL, the second nurse supervisor, "was even worse". The only evidence as to their relationship was the incident about changing the claimant's place on the duty list. The Tribunal is satisfied that seniority, pay or allocation of work did not depend on one's place on that list. These facts were crucial to the Tribunal's determination.

While there was not a grievance procedure in place the claimant's evidence was that Dr. L and Dr. S were "absolutely" accessible. While the claimant mentioned some issues to the respondent the Tribunal is not satisfied that these were sufficiently grave to warrant her resignation or that the respondent was aware of the claimant's perception of those issues.

For the above reasons and in light of the totality of the evidence the Tribunal is not satisfied that the claimant discharged the onus of showing that by reason of the her employer's conduct it was reasonable for her to terminate her contract of employment. Accordingly, the Tribunal finds that the claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

As this was a claim for constructive dismissal a claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, does not arise. Accordingly, the claim under those Acts is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)