

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE – *claimant*

CASE NO.
UD1205/2008

Against
EMPLOYER -*respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms M. McAveety

Members: Mr. L. Tobin
Mr O. Nulty

heard this claim at Cavan on 5th May 2009
and 3rd November 2009
and 4th November 2009
and 8th January 2010

Representation:

Claimant: Mr. Brendan Archbold, 12 Alden Drive, Sutton, Dublin 13

Respondent: Thornton & Co., Solicitors, 1 Maudlin Street, Kells, Co.Meath

The respondent is a Community-based project, which aims to address the issue of substance misuse through the provision of information, family support, complementary therapy, NADA treatment programme and training to individuals, families and the wider community.

Claimant's Case:

The claimant was a founder member and a full-time volunteer with the respondent. The claimant became a director in October 2006. The claimant's partner and sister (GmK) were both on the Board of Directors. The Regional Drugs Task Force approved funding for a Project Co-ordinator, Project Worker and premises and as a result the claimant was offered and accepted the position of Co-ordinator from November 2006 until her resignation in May 2008. The claimant's duties were administration, staff management and outreach work. The claimant met with the supervisor on a monthly basis from November 2006 to May 2008. The claimant was given a job description on commencement but never received a staff handbook. She signed a contract of employment on April 30th 2007. Also it stated that the grievance and disciplinary procedure would be discussed with her.

The claimant was asked not to attend further Board meetings so contacted the Chairperson of the Board (SC) but was instructed to speak to the Vice-Chairperson (MS) for an explanation. The claimant requested to meet with SC on a monthly basis but was told by the Chairperson that she was too busy but instead could contact her by e-mail or phone.

The day after the claimant was asked not to attend any further Board meetings she contacted MS and was told she had “handed the baby over to the babysitter and was no longer part of the Board” in the context of her transfer from a voluntary position to a paid employee. She was shocked as part of her job was to attend meetings. MS told her “no longer dearie” and informed her that her partner and her sister would also have to leave the Board due to a conflict of interest. When she had applied for the position her partner and sister’s membership of the Board had been suspended but they were reinstated following the claimant’s appointment.

The claimant did not attend the November and December Board meetings and was on leave for the January Board meeting. The claimant felt isolated and hurt with no support having already written to all the directors to explain why she should be present at Board meetings. One morning the Administrator (EJ) was very upset and informed the claimant that it was due to the fact that the claimant no longer attended Board meetings and as a result EJ wanted to resign as Company Secretary.

On the claimant’s return from leave in January one of the Project Workers (MW) informed her that she had received a €200.00 Christmas bonus. The claimant was not consulted on the matter even though she was her boss. It created tension between the staff and claimant.

In November she met with EJ (office administrator) to discuss the compilation of financial reports. The claimant felt that EJ was hostile towards her suggestion of additional training in compiling the financial reports. EJ informed the claimant she was resigning and walked out of the office. A project worker (MW) was also present. After lunch the claimant received a call from the respondent’s contact in FAS. The FAS contact informed the claimant that she had received a call from a very upset EJ. That evening the claimant emailed a full report of the events surrounding EJ’s resignation to the Chairman of the Board and hand delivered the report the following day.

The claimant spoke to MW (project worker) to see how she was after the incident with EJ the previous Thursday. MW informed the claimant that she had met with some of the Board the previous Friday but had not “hung her out to dry”. The claimant felt totally undermined. The claimant contacted the liaison officers to set up a meeting; one of the liaison officers (PG) contacted her and asked to meet.

On November 27th a meeting was held by the Employment Sub-Committee attended by the claimant; the only item on the agenda was EJ walking out and the fact that she was absent on sick leave as a result of stress. The claimant raised the issue of communications between herself and the Board and that meetings were being held behind her back. SC gave her some reports from staff concerning her and it was agreed they would meet the following week.

The claimant e-mailed the Chairperson on the 30th of November to enquire if the next meeting to be scheduled was of a disciplinary nature. The claimant wanted clarification on the nature of the meeting in case she needed to organise to have a representative present. On December 4th 2007 the claimant wrote to all the Directors to outline her position and seek clarification on the issues raised. The claimant sought clarification on her role, questioned why SC refused to meet with her, why the

Christmas bonus given without her consultation, who had compiled the reports of complaint about her and when those reports had been submitted to the Board. The claimant received no response from the Board. SC emailed the claimant requesting her to attend mediation.

A mediation agreement was drawn up and the process commenced. In January 2008 she emailed SC with her concerns about the progress of the mediation, her work overload and a request for a temporary receptionist / administrator to fill in for EJ.

In January 2008 the claimant was asked to a meeting to discuss problems concerning her travel and substance requests. The claimant was advised she could bring a colleague with her. The claimant was dismayed and could not understand why there was disciplinary action being against her. She was distraught, broke down in tears and contacted her doctor who recommended sick leave due to work related stress. The claimant took annual leave directly after her sick leave and returned to work on the 13th of March 2008.

While the claimant was on annual leave EJ was re-instated in her administration position. The claimant wrote to SC (chairman) to meet and discuss the issues while she was on sick leave. SC emailed to say she was sorry she was out sick and to postpone any further action on the issues until she was fit to return to work. The claimant was out on sick leave until April 2008.

On April 21st 2008 the claimant resigned giving one months notice. The claimant cited that the undermining of her by some members of the Board and that having to deal with stressful and upsetting interventions was affecting her health as reasons for her resignation. On July 7th 2008 she received her P45.

On October 13th 2008 the claimant was awarded a Rights Commissioner recommendation in respect of the terms of her employment.

Cross-Examination

The claimant felt undermined by the Board as they thought she was overpaid for her position because of her lack of experience. Also meetings were held behind her back and letters the claimant sent were not replied to, the claimant felt SC resented that she was paid for her employment and her expenses questioned.

The claimant agrees that the following comment was only made in an effort to support EJ but admitted that it could cause offence; letter of November 16th 2007 regarding EJ *“She said she didn’t need training (re compiling financial reports) and I said I felt she did, as if she got the required skills she would have these figures at her fingertips.”*

The claimant agrees that MW (project worker) wanted to speak to her regarding some of her clients but she was too busy at the time and told MW that she could go higher with her concerns.

The claimant’s sister (GmK) gave evidence. She was with the respondent from day one and was a member of the Board. She resigned from her position in April 2008. She was on the premises when EJ walked out and stated she had only heard her raised voice that day. She attended Board meetings and brought up her concerns in February 2008 that two staff, EJ and MW, were on sick leave and she wanted a facilitator to come in. SC disputed the need for a facilitator saying it was not needed. Another member of the Board said the claimant was not fit to carry out her job.

Respondent's Case

The Chairperson (SC) of the Board gave evidence. No terms and conditions of the claimant's employment were discussed at Board meetings. SC was unaware that the claimant felt she was not allowed to attend Board meetings. It was agreed the claimant would attend Board meetings as she was front line staff but would have to step out when matters were raised that did not concern her. SC apologised to the claimant for the misunderstanding.

In relation to the staff handbook, the claimant had e-mailed a template to SC, SC had discussed it with the Board and amended it to suit the claimant and e-mailed it back to her.

In relation to the incident with EJ (administration worker), the chairperson had requested a report and discussed it with the liaison committee. It never occurred to the chairperson that she had to tell the claimant that the incident had to be discussed with the liaison committee. She also got a written report from EJ. The liaison committee also met with MW (project worker) as she also had issues with the claimant.

The chairperson did not feel it was appropriate for GmK or the claimant's partner to request minutes of meetings concerning the claimant. However they did absent themselves when issues were discussed about the claimant. The chairperson did not recall GmK requesting the help of a facilitator, a mediator was already in place.

The Board had not ignored the claimant's letter of December 2007. The chairperson offered to meet the claimant on December 24th but was told by the claimant that the office was closed. In January there was a difficulty with the claimant's expenses, the claimant apologised for the mistake and amended the expenses.

The claimant wrote while she was on sick leave requesting to have a meeting to discuss the issues but the Board decided to wait until she was fit enough. She was surprised to receive her letter of resignation.

A voluntary director and Treasurer of the sub-group gave evidence. He was responsible for the respondent's accounts and expenses and therefore needed an explanation from the claimant over the problem with her expenses.

In 2006 the Voluntary Director (PmB) was called to a meeting in the claimant's house regarding an issue with the Vice-Chairman (MS), the claimant was not present at the meeting. There were other members of the Board at that meeting including the claimant's sister (GmK). The meeting was called to discuss the attempts of MS to control all the meetings and suggesting that the claimant could no longer attend Board meetings following her appointment as a staff member. PmB believes the aim of the meeting was to get MS removed from the Board; however no decision was made regarding MS. PmB had doubts about the claimant's ability to do the job but this was his personal opinion and not discussed or endorsed by the Board.

The Voluntary Director (PmB) of the respondent was a member of the employment sub-committee set up to handle any staff difficulties that arose. A meeting was called at short notice on the 16th of November 2007 as one of the employees had a problem. It appeared that a number of people were unhappy with the state of the company. The claimant was not invited to the meeting as the issues involved her personally. As a result of this meeting a motion was passed to bring a mediator into

the company to attempt to resolve the problems within the respondent.

The Vice-Chairman (MS) asked the claimant's sister and partner to leave the Board, as he did not think it was appropriate for them to be making decisions regarding the claimant's employment. MS resigned as a result of them refusing to leave the Board as he felt there was a serious conflict of interest.

A Project Worker (MW) was originally working for the respondent on a voluntary basis but commenced full-time employment in 2006. MW raised a number of issues she was unhappy about with the claimant but as far as she was aware they were never submitted to the Board. As a result of this MW contacted the staff sub-committee to raise her problems after the claimant turned down the request for a meeting stating that she had no time. MW was asked by the Chairman to prepare a statement setting out her problems. Any other staff members with problems were instructed to do the same. MW was forced to take 2 weeks sick leave as a result of the stress caused by the situation with the claimant. MW entered into the mediation process and it was mostly successful.

The Accounts/Administrator (EJ) worked for 23 years as a credit controller before taking up employment through FAS with the respondent. Her duties included fundraising, credit control, compiling applications for grants and the general day to day running of the office. In 2004 EJ was asked to take up the role of secretary to the Board. EJ attended a Board meeting in April 2007 where (GmK) openly said she was not comfortable with EJ being company secretary to which EJ responded that she would resign with immediate effect. EJ felt that the claimant 'grilled' her after all the Board meetings asking about what was discussed and stating, "I should be at those meetings."

The Accounts/Administrator had a good relationship with the claimant until she was appointed as the Co-ordinator for the respondent. The claimant gradually removed all of EJ's work except for credit control. EJ felt that the claimant was taking all her work away so she would have nothing to do forcing her to resign from the respondent as a consequence. The claimant asked EJ was it possible to have two sets of accounts to which EJ said 'no I will not do that.' The claimant later accused EJ of falsifying the accounts, EJ said she would have no part of it and walked out. The claimant's sister (GmK) was not on the premises when this incident occurred. EJ was asked by FAS and the respondent Board to prepare a statement of events. As a result of her treatment EJ had to take 2 months sick leave, and as a result was not involved in the mediation process.

Cross-Examination

EJ had one formal supervisory meeting with the claimant but worked with her on a regular basis. EJ did not put her grievances in writing before the final incident when she walked out. The claimant was regularly absent from the office; this concerned EJ, as she had no information to tell anyone that called or rang for the claimant. The directors called EJ after the incident occurred but that is as far as their support was extended. EJ does not know what the result of the investigation was.

Closing Statements

Claimant

The respondents approach to the claimant was to ostracise her. The respondent could have chosen to activate the Disciplinary procedures but did not. The respondent did not act when they believed they had performance problems with the claimant nor did they act on the allegation that a pay

cheque had been withheld. The respondent Board failed in all their obligations as an employer. The respondent's inaction constituted reasons for the claimant's constructive dismissal.

Respondent

The Respondent did not activate the Disciplinary Procedures, as they did not have any issues with the claimant. The claimant's case is against one or two people not a problem with the respondent company. The claimant devised her own job specification and signed her contract on that basis. The claimant did not raise any specific issues so her grievances could not be dealt with. The claimant was aware that a mediator was made available to deal with all the issues but she walked out before that process could begin. The respondent believes it was the claimant's personal difficulty adapting from being a member of the respondent Board to a paid employee answerable to the Board that led to her to leave the employ of the respondent.

Determination

The claim before the Tribunal was one of constructive dismissal and the onus is on the claimant to prove that the decision to leave her employment was reasonable in all the circumstances. Having considered all of the evidence adduced, the Tribunal finds that the claimant did not show adequate grounds for a claim of constructive dismissal and therefore the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)