

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

-claimant

CASE NO.
UD1828/2009
MN1743/2009
WT759/2009

Against

EMPLOYER

-respondent

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Ms M. Sweeney
Mr J. Flavin

heard this claim at Cork on 24th August 2010 and 2nd November 2010 and 3rd November 2010

Representation:

Claimant: Ms. Antoinette Vahey, Ronan Daly Jermyn, Solicitors, 12 South Mall, Cork

Respondent: Mr. Niall Byrne B.L. instructed by Matheson Ormsby Prentice, Solicitors,
70 Sir John Rogerson's Quay, Dublin 2

The decision of the Tribunal was as follows:

Evidence was heard from the Claimant and her former line manager and a colleague who attended a "performance improvement plan" meeting with her.

Claimant's Evidence

Essentially it is the Claimant's contention that there was an agenda "to manage her out of the business". She was given sales targets which were excessive and which she could not meet, and which she had not agreed to. Furthermore she was placed on a performance improvement plan based on a "general satisfactory" assessment which was part of "a development performance review" in which the Claimant was not aware that she was involved.

In January 2009 after a meeting in the context of the performance improvement process with her

line manager, the Claimant was spoken to by a colleague, who had accompanied her to the meeting, who indicated to her that she felt that the situation that she was in was more grave than she had realised. She told her that the culmination of the process could lead to leaving her employment without a reference. The Claimant was very concerned about this. She approached her line manager and sought an alternative to the continuation of the performance improvement process that she was in. He indicated that there might be a possibility of being able to resign her post on the basis of the payment of three months salary.

She elected to take this option and was subsequently presented with an agreement entitled “Waiver Agreement” by virtue of which she agreed to terminate her employment as of the 28th of February 2009 in consideration of the payment of the sum of €11,375.00.

The Claimant signed this Waiver Agreement because she felt vulnerable to the possibility of dismissal and because she feared that if she was dismissed she would not receive a reference from her employers. Furthermore, she was understandably concerned that her good reputation in the telecommunications industry would be tarnished if she was let go. She left her employment in compliance with the Waiver Agreement and on payment of the agreed sum. Some months later she discovered that the Respondents were introducing a redundancy scheme, by virtue of which her likely redundancy payment if she were still with the Company would have been a multiple of the amount accepted by her by way of settlement.

Respondent’s Evidence

Evidence on behalf of the Respondent was given by the line manager who conducted the development performance review and the performance improvement plan and his former sales manager and one other employee of the Respondent Company. The confluence of their evidence was that the Claimant’s sales performance was at a significantly unacceptable level and she was placed on the performance improvement plan and the purpose of this was to assist her. They did concede that her sales targets were very challenging and that her past performance had been exemplary. They contended that there was absolutely no agenda to manage her out of the business, she was a highly respected member of the team and had given good service to the company for twelve years. The situation with regard to sales in an environment where the business in general was under considerable pressure, created a situation in which she might quickly have found herself in a situation where her employment might have been terminated for performance reasons and this was conveyed to her. She had approached her line manager to ascertain whether there was way to circumvent the process that she was in, he made enquires of HR and advised her that she would be permitted to resign and receive three months pay. He notified HR who prepared the Waiver Agreement and she dealt with them from then on.

Determination:

The Tribunal is unanimously of the view that it cannot make a finding in this case that the Claimant was in fact dismissed either constructively or at all. The Claimant who impressed the Tribunal as being an intelligent and experienced business person, made a rational decision to resign her position, albeit at a time when she was under some considerable stress due to falling sale figures. There is no evidence however that this was anything more than ordinary work place stress, and not such as would alter the Claimant’s ability to make a rational decision about her employment.

She entered into an agreement, the contents of which she herself contributed to, and in respect of

which she had the opportunity of obtaining legal advice. She decided not to take legal advice even though she was aware that this option was open to her. She did not seek legal advice for a number of months after her resignation.

The Tribunal can find no basis upon which to look beyond the agreement and it appears to the Tribunal same was entered into freely and in the circumstances this claim is disallowed.

Similarly, the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 are disallowed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)