

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE –**claimant**

UD664/2009

against

EMPLOYER–**respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Dr. A-M. Courell B.L.

Members: Mr. P. Pierson
Mr. O. Nulty

heard this claim at Longford on 24 March,
8 & 9 July and 8 November 2010

Representation:

Claimant: Mr. Shane Geraghty B.L. instructed by
Mr. Augustine Mamedu and Mr Brian Dolan,
Both of GM Solicitors, 6 Keon Terrace, Longford

Respondent: XXXXXXXX
Legal Officer with the respondent

The determination of the Tribunal was as follows:

This being a claim of constructive dismissal it fell to the claimant to make her case.

The respondent operates a bank with branches around the state. The claimant was employed on an eighteen-month fixed-term contract as a customer service advisor, initially in the respondent's Mullingar branch, from 20 March 2007 until 19 September 2008. The employment was uneventful with the claimant moving to the Roscommon branch, on account of her brother being appointed to a senior position in the Mullingar branch, in May 2007 before commencing in the respondent's Longford branch on 4 December 2007.

On Tuesday 11 December 2007 an incident occurred whereby a customer of the respondent became angry with the claimant because she would not allocate the funds from a cheque he presented, in the

way he wanted, to two separate accounts. While the claimant was correct in what she told the customer the assistant manager (AM) became involved in finding a solution to the problem and referred to the claimant as new. The claimant became upset at what had happened and felt that AM had not supported her. This was the second day that AM had worked with the claimant as AM had been on annual leave the previous week. The customer apologised to the claimant some two weeks later.

Until the summer of 2008 it was accepted practice for fixed-term staff, such as the claimant, to be accepted into permanent positions with the respondent. Permanent positions were advertised internally within the respondent and staff were moved from fixed-term to permanent positions three or four times per annum. A standard condition of contracts of employment within the respondent was to qualify as a Qualified Financial Advisor (QFA) within three years of commencing employment.

On 16 April 2008 the claimant was advised by email from the branch manager (BM) of permanent positions coming available in Athlone, Longford, Mullingar and Tullamore. The claimant applied for one of these positions and, on foot of this application, BM submitted a recommendation to the area officer (AO), effectively personal assistant to the Area Manager (SM), to whom a copy was also sent, on 25 April 2008. The relevant parts of the recommendation are set out below.

“Claimant has demonstrated the following since taking up cashier position in Longford:

She is a very good time keeper, on most days arriving in the office before 9am. Though not wearing full uniform is well groomed. Cash management is satisfactory with minimal cash differences. She has incrementally improved in generating referrals from the cash area to the various product areas but she would need more time before I could classify it as being consistent. Claimant’s attendance record in general is good.

She appears to have an issue with taking direction from senior members of staff and Management on occasions. She has at times got defensive when asked to, for example, open up cash box, answer phones, being questioned over completion of dockets. Claimant was allowed her study entitlement for QFA pensions recently. Having taken the days, she advised me the evening before the exam, she felt ill prepared for it. I encouraged her to give it her best shot but she was negative to the idea and did not sit the exam.

In summary claimant has ability and meets most of her contractual obligations. There is room for improvement but needs the continued Management support and feedback that she gets here. From her point of view though, she perhaps needs to be prepared to look on this more positively”

On 4 June 2008 the claimant asked BM directly if she had been successful in obtaining a permanent position. BM told the claimant that she had not been successful in her application and held a performance review meeting with the claimant the following day. At this meeting whilst BM referred to items mentioned in his recommendation of 25 April he did not give the claimant a copy of the recommendation. BM assured the claimant that, in line with current practice, her contract would be extended and she would be able to apply for permanency when future vacancies arose. During this meeting the claimant told BM that she felt bullied by AM. The claimant was

dissatisfied with the outcome of her performance review with BM and, being in an upset state of mind, did not recommence her duties after the meeting but left work, consulted her GP and obtained a medical certificate stating she was unable to attend work from 5 June until 9 June 2008 on account of “stress associated with difficulties in the workplace”.

In the event the claimant returned to work on 6 June 2008. On this day BM emailed SM, AO and the human resource manager (HRM) to apprise them of the allegations raised by the claimant. BM was not involved in the investigation into the claimant’s allegations of bullying against AM and told the Tribunal that his relationship with the claimant was effectively severed from 5 June 2008. The respondent’s position was that despite the allegations made by the claimant her performance of her duties was good from this point on.

On or around 9 June 2008 the claimant submitted a document to BM setting out her version of the meeting of the review meeting. She stated that she was unaware of the following issues raised by BM

- Not consistent with referrals
- Not consistent with phone answering
- Unsatisfactory time response to management requests (3-4 minutes)
- Stated that when cover is needed on cash I should consult other cashiers before asking management or other staff members on customer service
- My relationship with AM is unsatisfactory

The claimant pointed out she had won a voucher in May 2008 for the most referrals in the branch and felt she had been consistent with referrals. She felt she had been consistent in answering phones as it was a source of frustration to her when phones were not answered and she was aware this was a matter that had been raised by management. She felt her response to managers was in a prompt and efficient manner and always less than three or four minutes.

The claimant strongly disagreed about her not consulting other cashiers before asking management for assistance. She stated that until the meeting on 5 June 2008 she had been unaware of some issues causing her relationship with AM to be unsatisfactory and would like to be given the chance to solve and help improve the working environment. She added that on one or two occasions AM had made her upset and leave the branch crying. This had made it hard for her to face AM the next day.

The claimant expressed disappointment at the reasons for being turned down for permanency. She suggested the reasons given were untrue and that she had not been given the opportunity to resolve the issues due to her being unaware of them. The claimant told the Tribunal that if she had been given permanency at this time she would not have pursued the bullying allegation against AM.

SM met the claimant on 12 June 2008 as a result of which the claimant documented her problems with AM in regard to being singled out and BM in regard to her perception of having received a poor recommendation from BM in aid of her application for permanency. The claimant had been

supplied a copy of this before meeting SM.

SM met the claimant and AM on 2 July 2008 in a local hotel in order to discuss the issues informally. As a result of this meeting there was broad agreement as to what had happened with AM assuring the claimant that there had been no intent on her part to cause offence. Whilst SM accepted that it would be difficult to find a resolution it was agreed that there would be a further meeting in September. In the meantime BM asked AM to be sensitive to the claimant's feelings when giving instruction and asked the claimant to accept that instruction needed to be given and that AM was the person to give instruction.

On 4 July 2008 SM emailed the claimant and AM and set out the need for dialogue between them and set out five points on how to move forward and stressed the need for the claimant to get clarity on issues she needed to address in order to achieve permanency. The claimant sought extra responsibility and, later in July 2008, received training in and took on some of the responsibilities for foreign exchange transactions.

There was a follow up meeting on 25 September 2008 by which time the claimant's contract had expired and the respondent's policy on staff recruitment had been altered as a result of the financial crisis which was at its height at this time. At this meeting both the claimant and AM agreed that the situation had improved between them. After this meeting the claimant remained to discuss permanency with SM especially in light of the respondent's change of policy. SM was under the impression that the claimant's contract expired at the end of September 2008.

SM agreed to follow up with human resources and get back to her. Subsequently SM advised the claimant that he had obtained sanction for an extension of the claimant's contract until 31 October 2008. In the event the claimant felt unable to complete her contract and, after discussion with SM, it was agreed that she should leave on 17 October 2008 and be paid until 31 October.

Determination

Under the Unfair Dismissals Acts, 1977 to 2007 Dismissal is defined in Section 1 at (b) as

the termination by the employer of his contract of employment with his employer, whether prior notice of the termination was or was not given to the employer, in circumstances in which, because of the conduct of the employer, the employee was or would have been entitled, or it was or would have been reasonable for the employee, to terminate the contract of employment without giving prior notice of the termination to the employer,

The claimant told the Tribunal that if she had been granted permanency in June 2008 she would not have pursued the bullying allegation against AM. This is inconsistent with the bullying allegation forming the main plank of the claimant's case. Whilst the Tribunal is not satisfied that the bullying allegation was dealt with in an appropriate manner the fact remains that the real reason for the claimant's dissatisfaction with the respondent stemmed from her failure to achieve permanency in

June 2008. Even though the claimant was clearly very disappointed at her failure to achieve permanency at that time it has never been suggested that the respondent ought to have made a different decision rather the claimant feels that she was not told of the items holding her back prior to that decision. It is further clear that, despite raising a complaint against AM, the claimant's performance improved after being refused permanency. Unfortunately for all concerned the financial crisis intervened and the respondent was forced to change its recruitment policy such that no new permanent staff were to be appointed and temporary staff were to be let go on completion of their contracts. For all these reasons the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)