

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE

CASE NO.  
UD1596/2009

- *claimant*

against  
EMPLOYER

- *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms D. Donovan

Members: Mr J. Browne  
Mr F. Dorgan

heard this claim at Waterford on 23rd November 2010 and 31st January 2011  
and 1st February 2011

#### **Representation:**

Claimant: Nolan Farrell & Goff, Solicitors, Newtown, Waterford

Respondent: Ronan Daly Jermyn, Solicitors, 12 South Mall, Cork

#### **The determination of the Tribunal was as follows:**

##### Respondent's Case:

The respondent's Managing Director gave evidence. The claimant was employed on a part-time basis as a producer on a very popular current affairs programme on the respondent's radio station. The respondent employed 31 full-time and 20 part-time staff at the time.

The Director of Programmes at the station and the Head of News & Sport initially interviewed the claimant. The witness and the Director of Programmes, later to become the claimant's supervisor, gave her a second interview. He said that he was very impressed with the claimant and was aware she had a vast political knowledge. He had been made aware that she had run in the local elections 3 years previously. He remembered the claimant saying at the interview that politics were "out of her system".

On February 3<sup>rd</sup> 2009 the claimant informed the witness that she was standing for the upcoming local elections and would be requiring some time off in order to canvass. He explained that some months earlier he had refused other staff when they had requested career breaks for family reasons. He stated that he could not grant the claimant a career break having refused others before her. He

told the Tribunal that he was sorry he could not grant the career breaks but it was a small company and they could not let them go at the same time.

The claimant asked him to reconsider. He explained to the Tribunal that he felt he could not change his decision firstly because he had refused others time off and he felt a staff member who worked on a political / current affairs radio programme could not be employed and also run for local government. He and the other Director of Programmes felt other political guests interviewed on the programme could find it a conflict of interest. He stated to the Tribunal that he did understand the claimant was under pressure by the political party to run for local election.

On March 3<sup>rd</sup> 2009 the claimant wrote to the witness stating that at her second interview it had been discussed that she would be allowed 3 months leave of absence in the future to run her political campaign and that if she was successful she would resign from her position or if she was unsuccessful she would remain in her position. He stated that he had never agreed to it.

He replied to her on March 6<sup>th</sup> 2009 stating he had not agreed to her taking time off for election purposes. He also informed her that there were no other positions to deploy her to within the organisation. She was asked to indicate by Friday March 13<sup>th</sup> as to whether she intended to continue in her position in the company.

On March 18<sup>th</sup> 2009 he wrote to the claimant to invite her to a meeting on March 24<sup>th</sup> to outline why her position in the company should not be terminated given that she was still running for local election, which would compromise her role in the respondent company.

The meeting took place on March 25<sup>th</sup> 2009. The claimant, her union representative, the witness, the Director of Programming were present at the meeting as well as another Director of the company (BG) who took the minutes. The witness stated that a decision on the matter was not decided on that day. However the respondent's view was very "black and white", the claimant's position as producer on a current affairs / political programme could not continue if she was to run for local election.

Another letter was sent to the claimant to ask what her decision was – would she run for local election or remain in her position. A reply from her union representative stated she would still be running for local election and would not be resigning her position. On April 1<sup>st</sup> 2009 she was sent a letter of termination and was informed she could appeal the decision. She did and was unsuccessful.

On cross-examination the witness again stated on a number of occasions that it would have been unbalanced and could put the programme and station in disrepute if the claimant continued to work for the respondent while running for local election. He stated that if she had decided not to run for election she would have remained in her position.

The Managing Director was recalled on the second day of hearing. He stated that he had not offered the claimant a three-month leave of absence during the final round of interviews, should she run in the local elections. He would have apologised to the claimant for not being able to grant her request for a leave of absence but he would not have undermined another staff member by stating he would have granted the request if it was up to him. He reiterated that it was neither possible nor tenable for the claimant to be granted the leave of absence.

The Director of Programmes gave evidence to the Tribunal that he is also the presenter and editor of the programme for which the claimant was producer. At the first interview with the claimant, the Head of News and Sport was aware that the claimant had political interests. They enquired as to whether or not the claimant would have an interest in being a candidate again. The claimant assured them she would not be interested. The witness stated that this was important to the respondent, as the radio station must be impartial, as well as being seen to be impartial and it is regulated in this regard.

The witness stated that 60% of the content of the programme on which the claimant worked was political in nature, offering a combination of both local and national politics. In certain circumstances, depending on current political happenings, the political content of the programme can increase up to 90%.

If the claimant had stated at interview that she would be interested in being a candidate again she would not have been successful in obtaining the position of producer. The witness refuted that a career break had been agreed with the claimant during the interview process.

Due to the fact that the claimant had categorically stated during the interview process that she would not be interested in being a candidate again, this matter was not addressed in the contract of employment provided to the claimant.

The relationship between the witness as the presenter of the programme and the claimant as producer was a dynamic relationship, as was the case with all previous and current producers of the show. They performed a post-mortem after each show, considering matters to be followed up and future items for possible discussion on the show. If a news item were to “break” in the middle of the programme a decision was made between them as to whether to turn their attention to that news item. The witness ultimately is responsible for that decision as a member of management. The claimant did not express any difficulties with the working relationship to the witness during the time of her employment.

The witness recalled a casual conversation with the claimant, which took place during either January or February 2009. At that time the local elections were on the horizon and he asked her how she felt about it. The claimant expressed happiness to him that she would not be part of the elections but she mentioned that she was coming under some pressure to become a candidate.

It was a shock to subsequently receive a request for a leave of absence from the claimant. Management had previously refused the requests of three other staff members for leave of absences. Those staff members had requested the leave for non-political reasons. In addition to this the witness stated there was no other position to which the claimant could have been re-deployed due to the size of the station.

When the decision was taken to refuse the claimant’s request for a leave of absence the reasons were outlined to the claimant: - that there was no position to which she could be re-deployed and that if she were to remain in her position the non-bias and impartiality of the programme could be put at risk. A series of meetings were held with the claimant in the presence of a human resources representative and the reasons were outlined to the claimant at these meetings.

The witness stated that the claimant was a very valued employee and the respondent’s management team made the decision to dismiss her from her employment as “a last resort.”

During cross-examination it was put to the witness that the claimant was not explicitly informed that if she became a candidate, she would have to resign. The witness stated that while the question was asked of the claimant at interview, would she be interested in being a candidate again, she was not explicitly told she would have to resign if she ran in the elections. He accepted that this was not set out in the respondent's handbook or in the claimant's contract of employment.

It was put to the witness that an employee could be both a presenter and have political interests. The witness stated that it depended on the content of the programme they would be presenting. At one time an independent county councillor presented a programme but the witness ensured there was no political bias.

It was put to the witness that it could be said there was already a perception of bias from the time the claimant commenced employment, as it was well known locally that she had previously run for a political party. The witness replied that the claimant had resigned being a candidate at the time she commenced employment. The programme on which she worked is the most listened to programme in the locality and anyone who wants to contribute to the programme contacts the producer of the show and the claimant had input into what was included in the show. There could have been a perception of bias as a result of the claimant being a candidate in the local elections and this perception was of concern to the management of the station.

The Head of News and Sport gave evidence to the Tribunal. Both she and the Director of Programmes interviewed the claimant during the first round of interviews. The witness was aware of the claimant's political background, as she had previously covered the claimant's progress in a previous election campaign. The witness recalled that she specifically asked the claimant did she intend to be a candidate again and the claimant replied, "absolutely not." The witness stated that had the claimant hinted that she was going to re-enter politics she would not have progressed to the second-round of interviews.

When the claimant decided to run as a candidate in the local elections, the witness was approached by both a local councillor and the mayor about this issue. She stated that larger organisations have policies regarding the conflict between employees holding certain positions while being involved in politics.

The former Group Marketing Manager for the media group gave evidence that the Group Managing Director charged him with undertaking the claimant's appeal. He received an email from the claimant detailing the basis on which she wished to appeal the decision and he received documentation from the respondent on the process used in reaching the decision to dismiss the claimant. In conjunction with this the witness engaged legal advice. In considering all of these matters the witness found that the claimant was advised of the respondent's position and warned of the consequences in advance of the decision being taken to dismiss her from her employment. The witness held that the decision to dismiss the claimant was fair and reasonable. His decision was communicated to the claimant in letter dated April 23<sup>rd</sup> 2009.

During cross-examination the witness stated that the respondent had to take into consideration the type of programme the claimant was a producer of, the potential damage to the reputation of the programme as well as to the station and the potential financial difficulties that could cause for the respondent.

He confirmed that the employee who had job-shared with the claimant began working full-time after the claimant's employment was terminated.

#### Claimant's Case:

The claimant confirmed attending two interviews with the respondent during September 2007. However, she disputed that politics was mentioned during the first interview and the Head of News and Sport had not asked her if she was interested in being a candidate again.

During the second interview she recalled that the Managing Director had asked her how she had managed running in the elections in her previous employment. She explained that she had been given a ten-week leave of absence. The Managing Director told her at the interview that he would be willing to provide her with a three-month leave of absence should she decide to run as a candidate in the next local election.

The claimant confirmed when she decided to run as a candidate in the local elections in early 2009 she requested a leave of absence from her position. She had also checked that her colleague with whom she job-shared would be willing to work full-time while the claimant would be absent on leave. However, the Managing Director told her that he could not grant her this leave of absence as two other staff members had their requests refused. A letter dated February 12<sup>th</sup> issued to the claimant informing her that leave from her position as producer would not compromise the programme but that as a number of requests for leave from senior staff had been refused in the past year her request could not be granted.

The claimant asked him to re-consider his decision and he asked her to provide him with a list of the relevant dates. He informed her that management would consider her request and a decision would follow. She was subsequently informed by the Managing Director that her request was refused. He informed her that had it been up to him he would have allowed her request but that the Director of Programmes was not allowing it. The claimant was subsequently issued with a letter from her employer requesting that she desist running in the election but she continued as a candidate.

She subsequently received a further letter dated March 27<sup>th</sup> 2009 suspending her from work. The claimant was informed that she should write a letter stating her intention to desist running as a candidate or else her employment would be terminated. The claimant continued as a candidate. The claimant's employment was subsequently terminated with effect from April 15<sup>th</sup> 2009.

The claimant gave evidence pertaining to loss.

During cross-examination the claimant stated that she first made the decision to be a candidate in the local elections during January 2009. After she was approved as a candidate she raised the issue with the Managing Director in February 2009, as it was he who had told her at interview that she would be given a three-month leave of absence. It was put to the claimant that she had not raised the issue of the leave of absence in the four-week period prior to letter dated March 3<sup>rd</sup> 2009. The claimant replied that she had raised the matter verbally until that time. The claimant added that when she first informed the respondent that she was a candidate, she was told verbally to leave immediately.

It was put to the claimant that she had not informed management (during the discussions on the issue) that a member of staff was willing to cover her leave of absence. The claimant disagreed stating management had been informed but she accepted she did not raise this issue during the appeal.

It was put to the claimant that there was no position to which she could be re-deployed. The claimant stated that if it was the case that she was to return to her employment with the respondent after a leave of absence, she believed she could have been re-deployed to the position of receptionist or providing cover for lunchtime etcetera, as a person was employed for this function during her employment.

In reply to questions from the Tribunal, the claimant stated that her role as producer entailed providing eight items for each show from a range of media outlets and from texts, telephone calls and emails from listeners. She chose the topics for the show to a degree but this was in consultation with the presenter.

**Determination:**

Having carefully considered the evidence adduced at the hearing the Tribunal determines that the respondent was well aware of the claimant's political background before the respondent employed the claimant and the respondent did not consider that this was a bar to employing the claimant. Taking this into account together with the respondent's letter dated 12<sup>th</sup> February 2009 to the claimant wherein it was stated that the claimant's decision to run in the local elections would not compromise the programme the Tribunal finds that it was not reasonable for the respondent to dismiss the claimant in the circumstances. Therefore the claim under the Unfair Dismissals Acts, 1977 to 2007, succeeds. The Tribunal awards the claimant the sum of €11,521

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)