

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

- claimant

CASE NO.
UD1018/2009
MN151/2011

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: Mr J. Revington S.C.

Members: Mr F. Moloney
Mr M. O'Reilly

heard this claim at Dublin on 28th May, 31st August 2010 and 14th January 2011

Representation:

Claimant: Ms. Mary Paula Guinness BL instructed by:
Fitzpatrick Gallagher McEvoy, Solicitors, Orby Chambers, 7 Coke Lane,
Smithfield, Dublin 7

Respondents: Mr. John Barry, Management Support Services (Ireland) Limited,
The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant gave evidence. She started working for the respondent in October 1994. At that time her place of work was a 15-minute walk from her home in Dublin 5. She did not have a written contract of employment. The claimant looked after the money that came in. For a time she also did wages. She worked in the office. Over the years junior staff came and went.

In 2003 the company moved to Dublin 15. The claimant did not want to move because getting to work would involve 2 bus journeys and a long walk. The then managing director wanted her to continue working and organised a lift for her. When the man giving her a lift left, the then managing director organised another colleague to bring her to work. She usually arrived for work at about 9.30am. The then managing director had no difficulty with this.

She looked after the cash receipts and bank reconciliation. Everything imported must be reported

and she made sure that she did it properly. The respondent had two branches and she did the accounts for both. She also prepared all the end of year accounts. She had a very responsible job and was overloaded with work. There were no complaints about her work. The accountant praised her work.

In May 06 she told the new managing director that she had too much work and she needed help. Eventually an assistant was hired who did the China accounts, input the creditors and helped a bit. The assistant only stayed for 15 months.

By this time the long-standing managing director had retired and his son, the new managing director, was in charge. The new managing director demanded that she come to work earlier. She was told that other employees came in earlier. The result was that she was leaving home earlier and getting home later.

After her assistant left for a period of about six months a colleague helped the claimant whenever she had time. At last the new managing director interviewed for an assistant for the claimant. The claimant sat in on the interviews but the new managing director overruled her choice of assistant.

When the claimant's new assistant started in May 08 her salary was higher than the claimant's. The new managing director reluctantly agreed to raise the claimant's salary to the level of her new assistant's. From the beginning the new assistant did not want to use the systems set up by the claimant. The new assistant talked all day and did not get involved in the work. After a week or two the new assistant told the claimant that she was under the impression that she was leaving soon. This was a surprise to the claimant as she expected to work until she was 66 or older.

In April 08 the claimant was given her written contract of employment. She did not sign it despite pressure from the new managing director. The contract would have changed her conditions of employment for the worst. The contract specified working hours of 8.30am to 6.00pm, which would have resulted in longer hours than previously. The contract also specified a retirement age of 65. It also included a provision that her place of work could be changed. Altogether the contract did not suit the claimant. The claimant's former colleague was sacked because she would not sign the contract.

When the claimant's colleague who gave her a lift to work had an operation on his eye the claimant's husband drove her to work and back. When he went on full pension he got a job and was no longer available. She was offered a lift from an older colleague but she would not accept a lift from him because he had fallen asleep at the wheel.

The claimant was being treated badly at work. The new managing director would shout at her about time keeping and her work falling behind. The new managing director and the new assistant were stressing her out. The claimant felt that the reason the new managing director was making an issue of the time she arrived for work was that he wanted to get rid of her. The new managing director told her it was his way or no way. She spoke to her union rep about the matter.

In April 08 without warning or consultation the new managing director took the 6 chequebooks from her and gave them to the new assistant together with the key for the safe. The claimant felt that she was left with nothing responsible to do. One morning she came to work and found that all her files were moved into the new assistant's office. Nobody said anything to the claimant. When she complained to the new managing director he said that her work was falling behind. She lost the cream of her job. The claimant was very upset when she was told to go on lunch break alone.

One day a meeting was suddenly arranged to discuss days she had missed work. At the end of the meeting she decided to go home. Later her doctor prescribed antidepressants. She did not return to work.

The respondent wrote to the union and an investigation into her difficulties was due to start on 6th January 09. The claimant thought about returning to work. But she resigned on 10th February 09.

A former colleague of the claimant gave evidence. She stated she had been employed from October 2007 as an administrator but had since been dismissed, as she could not agree the contents of the contract of employment submitted to her. She and the claimant were the only females employed on the respondent's premises and worked in an office beside the claimant. The claimant was given an arranged lift to and from work daily. She was often 15 –20 minutes late in the morning but would not take a teabreak in order to make the time up. The witness often heard the new managing director shouting loudly at the claimant in the next room but could not hear what was said. They often met for lunch but 3 weeks before the witness was dismissed the claimant told her she was not allowed to have lunch with her anymore.

Respondent's case

The new managing director gave evidence. He is a qualified accountant. He worked abroad for many years before returning to the family business. He knew the claimant well and had a high regard for her. He works every second day in the Dublin and Navan premises.

The claimant's job was to do the accounts, pay the suppliers and update the computer system. She did a brilliant job. She would criticise him if he asked for her password. They respected one another. When an issue arose she would come straight to him. The matter would be fixed and they would move on.

In 2005 an accounts assistant was employed but she left over a certain issue after about 4 months. In 2007 an administrator was drafted in to help with the accounts and when she left in July the claimant requested assistance. The claimant was considering retiring. The accounts that year were filed close to the deadline. Three people were to be interviewed for the post of accounts assistant. In a conversation with the claimant before the interviews the claimant was insistent that she would not train the assistant unless she was paid at least as much. The claimant attended the interviews. It was the first time a staff member came to interviews. It was agreed before hand that all three interviewers, the new managing director, his brother and the claimant, would have to agree on the person appointed. The claimant agreed that she could work with the appointee.

The claimant liked to work in her own space so the new managing director moved upstairs to free space. The new assistant assisted the claimant in collecting money. The claimant saw the files being moved. This was because the new assistant needed them to do her job. The files were moved to keep it simple. The safe was in the new assistant's office and so she needed the key. They were working to get the financials to the accountant. The claimant was not undermined. The claimant looked after the financials while the assistant looked after the day-to-day stuff.

The new managing director and his brother bought out the former managing director in October 08. He consulted with ISME and issued all members of staff with contracts of employment. The contracts specified a retirement age of 65. He was unaware of the claimant's age at the time and the company does employ people over 65 years. The claimant never signed the written contract. He had no issue with the claimant then.

All the office staff members start work at 9.00am. It was his job to ensure that this was adhered to.

He did raise the matter with the claimant on occasion. The new managing director could not recall shouting at the claimant. She did complain that he called her an uncomplimentary name his reply was to say that if he had he apologised.

The claimant did speak to him about the difficulty with her lift to work. When her usual lift was unavailable she would not accept a lift from an older colleague. The new managing director checked his driving record; he had only had two small bangs years ago. The claimant requested a taxi for two days. The new managing director told her he could not afford it. The claimant did not come to work on those days. She was paid for those days. His last conversation with her was that. It was agreed that the days would be part of her holidays. The claimant's union rep wrote to him concerning the issue. This may have happened at around the same time as the chequebooks, files and safe key were transferred to the new assistant. The events were not linked. There was no intention to humiliate or upset the claimant.

The new managing director was shocked to receive the letter from the union. He had always worked with the claimant and they have worked things out. He did not discuss the matter with the claimant but did write back to the union. The claimant was on sick leave due to stress. The new assistant paid the wages and he took over money collection.

The new managing director was happy to have the matter referred to the Rights Commissioner. Both sides would be heard and a decision made. The new managing director was not aware of any allegations of bullying.

The question of the claimant's return to work became a hot issue. The new managing director needed her to do the accounts. He needed to know if she would be back. The claimant resigned.

The former managing director gave evidence on behalf of the respondent. After his retirement he normally visited the office once a week, during these visits he spoke with the claimant. The claimant never indicated any difficulties with the manager in fact she said he was doing a good job. No member of staff had ever complained about the Manager.

AB an employee of the respondent gave evidence. When he commenced with the company he worked in their warehouse and then had moved in to the office beside the claimant. He recalled he had never heard the new managing director shouting at the claimant. He had a difficult relationship with the claimant; she could come down on him quite hard if things were not done her way.

An electrical contractor who works on occasion for the respondent. He recalled two incidents where the claimant had given out to him. One was over the heating and that she could not control it. The second was when the bank returned a cheque and she had given out to him in front of all in respect of this.

A longterm employee also gave evidence that he was aware that the former managing director was leaving and his son was taking over. If he had any grievance in the company he would have raised them with the former managing director.

Determination

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal prefers the evidence of the claimant on most issues and while we accept that there was other avenues that the claimant could have pursued, and in the totality of the circumstances the Tribunal find that the claimant was constructively dismissed and award her €30,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal dismiss the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 because claimant terminated her employment when she resigned.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)