

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

- *claimant*

CASE NO.
UD456/2010
MN418/2010

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 E. Murray

Members: Mr D. Hegarty
Mr J. Flavin

heard this claim at Cork on 25th March 2011

Representation:

Claimant: Mr Donncha Kiely BL instructed by Ms. Ann Mc Shane, Martin A. Harvey & Co.,
Solicitors, Parliament House, 9/10 Georges Quay, Cork

Respondent: No appearance by or on behalf of the respondent

The determination of the Tribunal was as follows:-

The Tribunal was satisfied that the respondent was properly notified of the hearing. Neither the respondent nor a representative on their behalf attended the hearing.

Claimant's Case

The claimant gave uncontested evidence that she commenced employment with company A in February 2006 as an accounts assistant. At this time she was reporting to the financial controller (hereinafter referred to as LL). In October 2008 an associated company of company A commenced trading and she was asked to move and to work for them directly. The Tribunal was referred to a

letter from company A to the claimant dated 23rd December 2008 stating that the claimants employment contract was being amended to reflect her new job of accounts assistant cash and carry with the respondent company. Notwithstanding this change she continued to work in the same office space in which she had always worked which was located above the warehouse where the respondent traded, and also she continued to report to LL. Ultimately company A relocated its operation to Athy, leaving the respondent company solely occupying the Cork premises.

After the departure of company A another individual D became commercial manager of the respondent company. She was now reporting to him and from the very outset she found him extremely difficult to work for. He wanted the claimant to take on more roles and when she indicated any reluctance he accused her of being lazy. He constantly added new tasks to her role even though she was extremely busy and asked her to do tasks that were outside of her range of competence.

He was controlling in his approach, he would telephone her rather than speak directly to her even though they shared the same office space. He would not sign invoices for her as he would not permit his name to be on any official documents. He would give out to the claimant if any other staff came into her office. He gave her tasks to do which she could not do, or in respect of which she needed assistance but he would not provide that assistance. If she raised these issues with him he would tell her that she needed to put more time and effort in to her work. Her official working hours were from 9- 5 but she rarely left the office before 6..

Ultimately she made complaints to the HR department of company A in respect of D's behaviour towards her and sent e-mails in this regard. The Tribunal have been referred to samples of such e-mails.

In September 2009 the claimant suffered injuries in a car accident and was absent from work as a result. This happened on a Wednesday evening on her way home from work and she was unable to work the following Thursday and Friday. D telephoned her at home and said she should be at work and consequently she agreed to come back to work on a part-time basis from 10.00 to 2.00 p.m. each day, even though she was not fully recovered. At 2.00 p.m. D would give her a list of chores to do and she would consequently be delayed until 4.00 or 5.00 p.m. and go home exhausted. After the accident she felt that D became even more cruel towards her and if she raised any issue with him he would deride and belittle her.

On the 22nd of December 2009 the claimant enquired as to what hours they would be open over Christmas. She requested a day off over the Christmas holiday period and received a phone call from D the following day telling her to "f*** off if she didn't want to work", and further informing her that she could expect changes in the New Year. She interpreted this in a threatening way. She was so upset by these events that she wrote an email to D saying that she couldn't possibly work for him anymore, she was so upset and that she felt sick and could not take his abuse anymore.

She came to work on the 23rd December 2009 and at about 5.30 p.m. that evening he replied to her e-mails stating that he did not think he had done anything wrong. While she was reading the reply she was told that D wanted to see her. She asked if she could bring another colleague with her but this was declined. LL however happened to be present and remained in the office while the meeting took place. D asked her if her work was up to date and asked her for her passwords and logins. The claimant commenced to leave the office. D followed her. At this stage he was extremely angry and was shouting at her. He informed her that he was going to escort her

off the premises. She was genuinely scared and thought that he was dismissing her. D engaged in a 20 minute tirade and initially would not let her leave the room. Ultimately she said that if he would not leave her go that she would telephone the Gardai. He responded to this by saying that he had "something on her". The Claimant felt obliged at that stage to telephone the Guards, she told them that she needed the assistance of the Gardai to get out of her work place. The Gardai informed her that they could not come, but she did not pretend this to D, and audibly said "okay I will see you in a few minutes". Ultimately LL and another colleague N persuaded D to let the claimant leave the premises. LL left with the claimant and after about 30 minutes composing herself in the car park she drove home.

Later that evening she wrote to one of the directors of the parent company to complain officially about D's conduct towards her. Indicating in that e-mail that she could no longer work for the respondent company under D's management. On the 14th January she received a letter from the director accepting her resignation and she received her P45 shortly thereafter. The claimant also gave evidence of the loss that she had incurred.

Determination

Based on the un-controverted evidence of the claimant the Tribunal is satisfied that the conduct of her line manager and the failure of the company to take appropriate action in respect of her complaints in this regard, were such as entitled the claimant to terminate her contract of employment with the respondent. In the circumstances the Tribunal finds that the claimant was constructively dismissed. She is entitled to payment under the Minimum Notice in terms of the Employment Act in the sum of €942.00.

The Tribunal finds that compensation is the appropriate remedy and having carefully considered the matter and all the circumstances surrounding the case awards the claimant the sum of €40,000.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)