

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE

CASE NO.  
UD290/2010

*- appellant*

against the recommendation of the Rights Commissioner in the case of:  
EMPLOYER  
under

*- respondent*

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr T. O'Grady  
Ms M. Maher

heard this appeal at Dublin on 20th June 2011

#### **Representation:**

Appellant(s) : Triana, Independent Advice, & Information Bureau, 13 Store Street, Dublin 1

Respondent(s) : IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

**This case came before the Tribunal as a result of an appeal by an employee (the appellant) against a decision of the Rights Commissioner under the Unfair Dismissals Act, 1977 to 2007, r-070048-ud-09/EH.**

The determination of the Tribunal was as follows:-

#### **Appellant's Case:**

The appellant gave evidence. He had been employed with the respondent since July 2004. He had no contract of employment or aware of a grievance procedure. New staff were employed in March / April 2008 which meant less work for the existing staff.

The claimant and 15 of his colleagues had issues with a new Supervisor (ID) and wrote a letter of complaint to the Managing Director (MD) listing eight different issues:

1. doesn't allow the employees to have their own opinion and communicates with employees using vulgar language
2. when employees refuse to stay after working hours, she blackmails them and treats with no placement for the next few days or termination of the employment
3. by her vulgar behaviour, she wants the employees to terminate their employment under the psychological pressure without a right to redundancy payment
4. she discriminates employees of other nationalities
5. increases demand of jobs which employees are not capable of fulfilling, which we believe is the next pretext to terminate our employment

6. humiliates employees, calls them names and her unacceptable behaviour causes some employees to suffer from depression
7. places new employees on the job but employees who worked for the long time, are left at home without placement justifying this with no vacancies
8. favour her husband who is a new employee over others when setting roster

The letter also stated that the issues had already been brought verbally to the MD but she had taken *“no steps to resolve the matter. Failure to resolve the matter will lead to seek legal redress as provided by Irish law.”*

The appellant explained that he had written the letter as he had the best knowledge of the English language. All 16 staff signed the letter. He spoke to his union representative later that month regarding a breach of the Payment of Wages Act, 1991 in respect of his contractual working hours. His union representative wrote to MD. The respondent refused to have any discussions with a third party.

On June 13<sup>th</sup> 2008 he received a letter from the respondent stating he was “required” to attend a meeting on June 16<sup>th</sup> 2008. On June 16<sup>th</sup> 2008 he received a call informing him the meeting had been postponed until June 19<sup>th</sup> 2008. He received a letter rescheduling the meeting for June 18<sup>th</sup> in the Imperial Hotel in Bray and informing him he was “welcome to bring a colleague” as an observer. A half hour before the scheduled meeting he was informed of a change of venue. ID, the Business Development Manager and another Supervisor were present. He received a verbal warning about work carried out on a premises he had worked on in February 2008. He could not understand that if there had been a problem why had they not spoken to him sooner.

The appellant stated that between April 1<sup>st</sup> 2008 and July 12<sup>th</sup> 2008 he had only been called to work 2 half days and a 3-hour shift even though he had been available for work. Text messages from his mobile phone were produced to the Tribunal stating there was no work for him on a number of dates.

He sent a detailed letter to the respondent company dated September 10<sup>th</sup> 2008. He stated that he had given MD a detailed letter of issues he and his colleagues had with ID and had wanted to arrange a meeting with MD and his colleagues to discuss the matter but this had never happened. The respondent had been in possession of his private mobile number, his company phone had been confiscated, and had not contacted him for work. He had also left a number of messages for MD who had not replied. He informed them he had acquired new employment but was willing to meet with a company representative.

On cross-examination he again said that he had spoken to her about the issues he and his colleagues had with ID and she had asked for more specific details. He could not understand why MD had not dealt with their issues with ID as the letter had set out eight serious issues they had with ID. He explained that he had not received any prior verbal or written warnings.

The appellant told the Tribunal that on June 20<sup>th</sup> the van was taken away from him. He was told it was due to the insurance company stating that he was under 25 years of age. He explained that he had a slight accident a few days previously but it had not been his fault. He agreed he had met the respondent after he had left.

### **Respondent’s Case:**

The Managing Director (MD) gave evidence. She explained the company was involved in industrial and office cleaning. They employed over 13 different nationalities throughout their 110 staff.

The appellant commenced employment with the respondent as a cleaner and was later promoted to the position of Supervisor. All staff were given a contract of employment. On May 13<sup>th</sup> she received a written complaint regarding ID from 16 members of staff. It was very serious. She contacted all staff individually but no one responded. She asked the appellant for examples but he did not give her any. Initially she did

not speak to ID until she got further information about the allegations.

The witness told the Tribunal there had been no previous problems with the appellant, only near the end of his employment. The appellant had a problem with ID. He did not respect her and would not respond to her.

She explained that all staff hours were reduced due to the downturn in business. In respect of the van being taken off the appellant she explained that the insurance policy did not cover drivers under 25 years of age and over 70 years of age. She explained the company mobile phone had been taken from the appellant as it appears he had been using it for personal use and he had not attended a meeting to explain the situation.

On cross-examination she explained that on some building sites their employees were contracted to clean the foreman would request the same crew finish the job and this was why some staff got more hours work than others. She said that they had tried to offer the appellant work but he was not available. She agreed it was a fault on the respondent's part that the appellant had not been informed prior what the meeting was about.

**Determination:**

The Tribunal finds the appellant was constructively dismissed, as there was a lack of any proper engagement on their part with the original complaint made by the appellant and 15 other employees in May 2008. The fact that they sought to utilise their own grievance procedure after he had resigned and he did not engage with them is of no relevance.

The Tribunal upsets the Rights Commissioners decision and awards the sum of € 2,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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