

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE

-Claimant A

CASE NO.

UD176/2010

EMPLOYEE

-Claimant B

UD185/2010

against

EMPLOYER

-Respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr J. Hennessy
Ms S. Kelly

heard this claim at Kilkenny on 18th January 2011 and 20th June 2011

Representation:

Claimant: Ms. Ger Malone, SIPTU, Connolly Hall, Summerhill, Waterford

Respondent: Peninsula Business Services (Ireland) Limited, Unit 3,
Ground Floor, Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:

These cases had been listed for a resumed hearing on three consecutive days in March 2011. The directors of the respondent did not attend the hearing. The Tribunal adjourned the cases peremptorily against the respondent. At the time of the adjournment the parties agreed three specific dates for the hearing in June 2011. However, the directors of respondent company failed to attend the hearing on 20th June 2011. A representative on their behalf attended before the Tribunal and informed the Tribunal that the directors of the respondent company were out of the jurisdiction.

The Tribunal refused to adjourn the case and proceeded to hear the case in the absence of any witnesses on behalf of the respondent.

As these were claims for constructive dismissal the onus of proof rests on the claimants to establish that because of the conduct of their employer they were entitled to or it was reasonable for them to terminate their contracts of employment.

Case of Claimant A

The claimant commenced employment as a care assistant in the respondent's nursing home in January 2005. The claimant loved her work and for the first few years there the employment relationship was good. However, from January 2008, when an increase was sought in the employees' remuneration package and the claimant was elected shop steward, the respondent's attitude changed. The claimant outlined a course of conduct by the proprietor/matron (the matron) of the respondent, comprising specific incidents that gave rise to her decision to terminate her employment on 31 October 2010. The conduct outlined included *inter alia*:

1. being subjected, along with some others, in April 2008, to abusive language and foul name-calling *viz* "Ye dirty f-----g bitches", "You're useless", "Care staff are shit", the latter having been uttered in the presence of the cleaning and kitchen staff;
2. on the same occasion, being pushed along the corridor as she walking towards a particular room and later being "leapt at her and hit in the chest with her two hands" when the claimant told the matron that she was accusing them in the wrong. (The incidents at 1 and 2 occurred on the occasion when some employees, although they were not cleaners, had carried out cleaning tasks, prior to an HSE inspection of the home, on the instruction of the matron);
3. becoming more confrontational with the claimant and her daughter following an agreement reached between the parties at the LRC in relation to wages, uniforms and other matters and frequently calling the claimant while she was performing one task to do another;
4. cancelling tea breaks of the of the employees who were members of the trade union following a hearing before a Rights Commissioner in February 2009 and telling them that if they wanted to play hard ball she too could play hard ball – their work is physical and dehydrating and non-union employees were not affected in the same way;
5. splitting their shifts to preclude their entitlement to tea breaks following a recommendation by the LRC that the tea breaks be re-instated;
6. constantly finding fault with the claimant's work;
7. in July 2009, harassing the claimant while she was in the process of hoisting a patient on to a commode, making adverse comments on her competence in front of the patient(s) and telling her, "It is my f-----g job to keep after ye."; the claimant was on certified sick for three weeks for high blood pressure
8. telling the claimant she could not get cover for her when she had a hearing before the LRC in late October 2009 (in relation to the reduction in her working hours from 36 to 9 while others had over 40 hours) even though a number of employees had not been asked if they could provide cover; accusing the claimant, when she produced a work rota, of breaking into the office and stating this to other employees; grabbing a hand bag from the desk as the claimant was passing the nurses' station and stating to a nurse who was present to lock it away, that there had been a break in the previous day and adding "You can't be too careful with these girls", which latter the claimant interpreted to mean that she was a thief;(a nurse had copied the rota for the claimant);

9. reference being made by the respondent's daughter (who was also a director of the respondent company), in front of several members of staff, to a difficulty which the claimant's daughter had some years previously as result of her best friend's tragic death and about which the claimant had confided in the matron two years previously
10. telling members of staff that they were getting rid of the claimant and her daughter after Christmas; having had to work both Christmas and New Year's Day in 2007 and 2008 and being the only member of staff with children who had to work;
11. issuing the claimant with a warning for attending the LRC;
12. applying different rules on the use of mobile phones and wearing of uniforms to employees who were union members and in particular accusing the claimant of the "illegal use" of her mobile phone while on duty when this had not occurred;

While the claimant would have liked to be in employment and particularly so at Christmas time she could take no more bullying, harassment and humiliation and on 31 October she resigned from the employment.

Determination in Case of Claimant A

Having considered the above and all other evidence outlined by the claimant the Tribunal is satisfied that she has shown that the course of conduct adopted by the respondent was unreasonable and constituted bullying and harassment which undermined the claimant's dignity in her place of work. It was reasonable for the claimant in the circumstances to terminate her contract of employment with the respondent. Accordingly, the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds. The Tribunal awards the claimant the sum of €22,620 under the Acts.

Case of Claimant B

The claimant commenced employment as a care assistant in the respondent's nursing home in 2005. The claimant outlined a number of specific incidents where she was subjected to unreasonable treatment and picked on either by the matron or her daughter, who was also a director of the respondent company, which gave rise to her decision to terminate her employment on 31 October 2010. The conduct outlined included *inter alia*:

in late 2008 leaving her on her own for over six hour in a local hospital with a patient who had such a violent episode earlier that day that it had taken five staff to restrain her and who had kicked and boxed her over those hours and who had ripped her uniform; failing to ensure that she had a toilet break over those hours; leaving her on her own in a situation where she sustained scratches, a broken nail and a ripped uniform; telling her when she did not agree to staying on for a further three hours beyond her finish time that she "had to stay if she wanted her f----g job"; suspending her the following morning for gross misconduct; issuing her with a final written warning for allegedly breaching the nurses' code in leaving the patient despite the facts that she was not a nurse, had never been made aware of the code and that she had not left the patient until she had been relieved by the matron's daughter; subjecting her to a disciplinary hearing in respect of that incident and leaving a final written warning on her record for one year despite the fact that it

should only have been for six months;

other specific incidents of bullying treatment included shouting at her, instructing her to get a hoist from downstairs and while waiting to obtain it shouting at her that she had abandoned her position and to get upstairs; shoving her along the corridor, poking her in the chest;

The matron's behaviour resulted in the claimant's doctor putting her on sick leave due to stress and anxiety. An incident in late October 2009 upset the claimant so much that she did not want to return to work thereafter. This related to events that occurred two years earlier when two of her friends had died tragically. In late October 2009 the matron's daughter, in front of the claimant's co-workers, referred to certain matters relating to that time in 2007, which had been communicated to the respondent in confidence. This was the final straw for the claimant and she resigned.

Determination in Case of Claimant B

The Tribunal is satisfied that the claimant has established that the respondent's conduct over a period of time was of such a nature that it was reasonable for her to terminate her contract of employment. The final incident on its own would have been sufficient to justify this decision by the claimant. While the matters referred by the matron's daughter might have been in the public domain some years previously, they had been communicated to the respondent in confidence. Breaching that confidence and doing so in such a public way was sufficient to wholly undermine the claimant's trust and confidence in the respondent and render it reasonable for her to terminate her contract of employment with the respondent on 31 October 2009. Accordingly, the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds. The Tribunal awards the claimant the sum of €15,080 under the Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

