

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE – *claimant*

CASE NO.
UD2506/2009

Against

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. J. McGovern BL.

Members: Mr. M. Noone
Mr. T. Brady

heard this claim in Dublin on 3rd March 2011, and 7th and 8th July 2011

Representation:

Claimant(s): Ms. Kiwana Ennis BL instructed by McGrath McGrane,
Solicitors, Suite 323, The Capel Buildings, Mary's Abbey, Dublin 7

Respondent(s): 3rd March 2011 - Ms. Eugenie Heuston BL instructed by
Mr. James Evans, James P Evans, Solicitors, 13c Main Street, Ongar Village,
Dublin 15

Respondent(s): 7th & 8th July 2011 - Ms. Clare Bruton BL instructed by
Mr. James Evans, James P Evans, Solicitors, 13c Main Street, Ongar Village,
Dublin 15

The determination of the Tribunal was as follows:-

Respondents Case.

The respondent is a Family Resource Centre (FRC) in North Dublin and is funded by the Family Support Agency (FSA). The FRC is a Limited Company and the directors are part time local volunteers. They hire a Project Manager (PM) and support staff to run the centre for the community.

DG is the chairperson of the FRC. She told the Tribunal that she is a chef and worked forty or more hours a week. She first became involved in the FRC in 2001 and was invited to the board of management in 2003. She spent between five to ten hours a week dealing with issues for the FRC. If there were problems in the centre they were discussed to get to the source of the problem. Mediation was sought as the best option along with the values of the centre.

SW outlined to the Tribunal her educational qualifications. She is currently employed as community development manager with a County Council. Her duties included giving advice, funding to county development projects, sitting on the board of management of the FRC, giving support and development and recruiting staff. She was not a director of the FRC when the claimant was dismissed.

The claimant was employed in 2006 as a Project Manager. Her role amongst other areas was to support the development and implementation of a three-year strategic plan, to manage and develop funding, to supervise and develop staff and volunteers, and to support the board.

The employment was without incident until early December 2008. The FSA provided funding for the FRC to develop a local directory. A local youth worker telephoned the FRC and complained that it had published her private mobile number in the wrong part of that directory.

The youth worker then phoned (NL) a director at her home and said she was not happy with the response she had received when she had telephoned the FRC. NL apologised to the youth worker and asked her to send in a written complaint marked private and confidential.

In January 2009, the complaint letter arrived and was opened by the claimant. The claimant then called to the home of the youth worker without approval. Following this, the youth worker told the board.

The board launched an investigation and invited the claimant and her trade union representative to attend a meeting by letter. In the letter to the claimant, the word grievance was used instead of disciplinary. At that meeting on the 12th February 2009, the claimant's trade union representative proposed mediation, which was agreed.

On the 27th February 2009, SW wrote to the claimant with a list of mediators. At a meeting on the 12th March 2009, the terms of reference were discussed and on the 27th April 2009 the claimant signed the mediation agreement.

Each year the FSA conducts an audit of the accounts to ensure compliance. Nearly 90% of their funding comes from the FSA. DG asked the claimant to provide the figures for the audit, as was the case in previous years. The claimant did not provide the figures and the directors were unprepared during the audit. After this, the directors felt they had no option but to resign. They informed the FSA who asked them to stay on, because if they all resigned, the

centre would have no board of management and would have to close.

The FSA then asked the board of management to look at their structure. On the 3rd June 2009, following an internal review, a management committee was established. The board appointed SW as chairperson of the new management committee. The FSA told the board that Project Managers could no longer be directors or signatories on cheques.

The claimant went sick by reason of work related stress. A number of correspondences were passed between the claimant's legal representative and the FRC's legal representative.

On the 12th October 2009, the board wrote to the claimant, notifying her that her contract was being terminated. The claimant was dismissed because communication had broken down. Trust and confidence were gone and she was not willing to work with the board anymore.

Claimant's Case

The claimant had no experience working in Ireland but had twenty years experience working with volunteers. Her role in the FRC was to work on projects and to help the part time Board.

When SW joined the Board from the County Council in early 2008, she was happy because SW became involved with community development. SW would attend Board meetings but would leave when local issues were discussed.

The FSA provided funding for the FRC to develop a local directory. 2500 directories were printed and delivered to the community. In December 2008, the receptionist told her that a person had called demanding to speak to the manager. The claimant telephoned the youth worker that evening and the youth worker appeared very angry.

Following the telephone the claimant established that the youth worker had agreed to put her contact details in the directory. When she brought this to the board, they did nothing.

In January 2009, the claimant arrived into the office. A letter was opened by admin, the details put into the records book and the letter was given to her. She told DG that a complaint had been received from the youth worker. The claimant spoke to NL who told her she had received the complaint from the youth worker and had asked her to put it in writing. The board then engaged with the youth worker but not with her. She felt let down by that.

On her way home, the claimant decided to call to the home of the youth worker who did not want to talk to her. She agreed it wasn't the smartest thing to do. A few minutes later DG telephoned the claimant about calling to the youth worker and they had a heated conversation. The following day the claimant went to her GP and was off sick for a week.

Within thirty minutes of returning from sick leave, SW and NL handed her an envelope and said the whole board were taking a grievance procedure against her.

SW had telephoned the claimant on a number of occasions and on one occasion SW said, what's the problem, I was only going to give you a verbal warning. The claimant told SW she did not report to her.

GF (trade union rep) told the Tribunal that he attended a meeting on 12th February 2009 on behalf of the claimant. There was interference between the claimant and the board. It was suggested that mediation should take place between the parties and he was not certain of the outcome of this. SW insisted that they sign the minutes of the meeting but her union rep said no.

She had three meetings during the mediation process, and made an agreement. However, once the meetings finished the board did not implement the agreement.

She had expected to attend the FSA audit, as she had done in previous years, but DG told her she could not attend. DG did not ask her for any documentation for the audit

On one occasion, she went to another FRC to discuss their training. They had a better structure and when she brought this to the board, they took it personally.

She attended sub-committee meetings from February 2009 to June 2009, and on one occasion, SW told her that she was the problem,

On the 27th June, a meeting was called of all staff. She asked about the terms and if a problem arose, whom would she report it to? SW said “there won’t be a problem”, we will be there for you.

This change meant that she would no longer be reporting to the chair of the board but to SW who was chair of the management committee.

At the end of July 2009, she went to her doctor and went on sick leave. Her doctor told her not to go back to work until the issues were solved.

Determination

The Tribunal carefully considered the evidence adduced at the hearing. There is a conflict of evidence between the parties. It appears that there was a conflicted and hostile working relationship between the parties, which was still apparent during the course of the hearing.

Issues were raised during the hearing that were seemingly never notified or articulated between the parties up to this juncture. The claimant never made any written complaint in relation to her issues. The board never invoked the disciplinary process against the claimant.

As a result, a deadlock ensued between the parties. Neither party could or wanted to work with the other going forward. The Board then made the decision to dismiss the claimant in the full belief that the future of the BFRS was in jeopardy.

However, in dismissing the claimant, proper procedures were not followed, even though there was an extensive grievance and disciplinary policy in place.

No reasons for the dismissal were given in the letter dated 12th October 2009. No appeals procedure was referred to or provided in the letter dated 12th October 2009, and no alternative employment option was considered or notified to the claimant.

In assessing the loss to the claimant, the Tribunal must in the present circumstances take into account the conduct of the claimant during her employment with the respondent particularly in the final ten months of her employment.

The Tribunal determines that an award to the claimant in the amount of €10,000.00, represents just and equitable compensation, pursuant to the provisions of the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of

The Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)