

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

UD2497/2009

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

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms V. Gates

Members: Mr F. Cunneen
Mr J. Maher

heard this appeal at Dublin on 12th April 2011
and 4th October 2011
and 5th October 2011

Representation:

Appellant:

Mr O'Connor Stefan, Cullan, Tyrrell & O'Beirne, 3 Prince Of
Wales Terrace, Bray, Co. Wicklow

Respondent:

Eversheds O'Donnell Sweeney, Solicitors, One Earlsfort
Centre, Earlsfort Terrace, Dublin 2

This case came to the Tribunal by way of an appeal by the employee against the decision of the Rights Commissioner R-074829-ud-09/DI.

The determination of the Tribunal is as follows:-

Background

The appellant worked for a section of the respondent company that was re-located to Cork. Following several internal moves she claims that she had no option but to hand in her resignation due to bullying and harassment.

She had made her general manager, the human resource department and colleagues aware of the situation but felt she got no support and there was a complete lack of trust and confidence in the process used by the company to resolve the situation.

Appellant's case

The appellant DT began working for the respondent company in August of 2004.

She enjoyed her work in the section she was assigned to and had a good rapport with her colleagues and supervisor.

One year after her appointment the area she worked in was re-located to Cork.

In August 2005 DT was assigned to the commercial motor department. She had her reservations about the area as she was told by a friend that "it was a nasty section, to be careful and to watch her back." She was happy to be kept on by the company but was worried by what she had heard.

The new position was different (doing fleet insurance) to what she had been working on so she required training.

Training was provided on a one to one basis and during her training she clashed with her mentor who told her "she had the mind of a goldfish".

At this time DT discussed the issue with her team leader ED and her manager.

Her team leader told her to meet with the mentor and resolve the issues herself, but advised her not to cry as this might show she was afraid. Things quietened down mainly due to the fact that the mentor went on maternity leave.

She was moved to a different location but on the same team and was advised to apply for internal positions on-line.

DT did get a move to the commercial (farm) area in 2006, it was a very busy area and she was dealing with a very busy broker.

The position was very stressful and DT felt it may have needed a second person to work it successfully. She felt undermined. Her supervision was constant and her supervisor would read her e-mails and shout at her when she was on the telephone. She felt that it was frowned upon to ask questions. Things got so bad that she hated going to work, nothing she did was appreciated and nobody else got treated like her. She was treated differently to others, she was asked to move her clothes from chairs even though others had theirs hanging there and asked to wash her team leader's cup.

In the new position DT's reviews dropped in ratings from 4 to 2 out of 5.

She was told her work was bad and that she wouldn't get a job anywhere else.

During her reviews with ED in February 2008 and May 2008 the appellant requested to be moved from the busy broker. She was told to speak with JC in human resources. She did contact JC in June 2008 and was promised that the situation would be looked into.

Later she was told her work was bad, and she was not being recommended for a move.

At a second meeting with JC and the area manager KS the appellant was asked to do a 12 week training course with the assistant team leader MOR. She considered doing the course but then re-considered and changed her mind. If her rating did not increase from a 2 to a 3 she would then face disciplinary procedures anyway.

On consultation with her union it was agreed that a report based on an audit of sample files

would be done. This report was to be carried out by (K) an independent person. If the files proved to be inaccurate then the 12 week training course would be necessary. The appellants understanding was that she would see a copy of the draft report and be able to respond to any issues it raised before the report went any further.

K later told the union representative she would not meet to discuss the report.

The appellant felt the goalposts had been moved; she had no option but to hand in her notice. She had spoken with H.R., and her union official. She also spoke with the managing director for an hour and nobody was willing to help her.

DT did an exit interview on line and outlined all of the issues.

Under cross examination DT stated that she was aware of the internal internet and that there was a formal grievance policy and procedure in place.

Her initial review took place after six months of taking the post and an annual review took place at a later date. She found the new position complex. She was moved in September 2006 and the area was intense and very busy with a notorious broker.

DT sat next to MOR (*assistant team leader*) who had a lot of experience and did get help from her, she was able to do the job but contradictions and put downs by MOR made her feel she couldn't. Asked about interruptions while she was on the telephone DT said she would not put people on mute as she felt it was bad service. If MOR had something to say it should have been when the call was finished.

With regard to the 2 rating she was told she got it the first year because she was in training but in June 2008 she was shocked because it was a performance issue, things were not getting processed on time. She had numerous issues with her supervisor/team leader.

Initially DT undertook to do the training course but changed her mind over the weekend. She did agree to 20 files being audited but only current ones which were under her desk. This was to generate a report which she could comment on.

HR got the report before she had a chance to look at it or reply to it.

Respondent's case

Mr G *Company Director* stated in his sworn evidence that he did have a conversation with DT but had little or no recollection of the event. She did tell him she was leaving and he wished her well. As director he would not tolerate any bullying or harassment in the workplace and if that had been mentioned he would have brought it to the attention of H.R.

Mr G stated that he was aware of the process and would get ratings for employees at the end of each year. If somebody was consistently getting a 2 he would be aware of it but also in the same way would know if somebody was achieving a 5. Plans were put in place on an individual basis to bring people up to speed. He was surprised she was leaving the company but did not encourage her to stay. The meeting would have been approximately 15mins.

Under cross examination Mr G stated that there were 400 employees, it was not unusual for a number of people to have a rating of 2 but it was unusual for somebody to refuse training. Most would endeavour to get a 3 next time.

The company was caring and helpful. An independent external organisation was there for people who had any issues. Mr G had no recollection of asking DT why she was resigning or if she was going to another job. There is an appeals process for people who disagree with their rating, their union would be aware of it and H.R. would manage it.

KS *Area Manager* in his evidence stated that he knew the appellant from the area that re-located to Cork. The company had an open policy in dealing with people and he never had any bad experiences with employees. When he first met her he found her to be a good employee and very enthusiastic.

He became aware of performance issues from ED the team leader but things like bullying and harassment were never mentioned. If that had been suggested it would immediately have triggered him to make contact with H.R. The report done suggested that the appellant needed training. KS felt that the company had done its best for that appellant and that she deserved the best.

He met with the appellant on 12th August; they had a coffee and maybe a 30 minute chat. The appellant was adamant she wanted to leave the company. He understood she was moving to France to start a new chapter in her life.

He felt he had parted with her on good terms and was a named referee on her C.V.

Asked about an e-mail of June 2006 he stated that he could not remember it. It was five years ago and suspected it related to the move from the call centre that re-located to the first new position taken up by the appellant.

He was aware of day to day issues but nothing relating to bullying and harassment.

He was at the meeting of 20th June which was to identify the training needs, and was also at a meeting of 26th June but the appellant did not show up. The report was for H.R. and the appellants team leader, he was not aware of receiving it and had no direct involvement with who gave the training course. It was a matter for H.R.

MOR *Assistant Team Leader* stated that she looked after staff on the team and reported to ED.

She had worked for the company for 34 years and the team had 11 members.

The appellant was a very open person, and MOR was not aware of any complaints. She felt that they had an acceptable working relationship and had no idea where this was all coming from.

MOR was aware the appellant had an issue with a broker, but never considered there was any issue with her on a personal basis, she never shouted at her.

She sat beside DT and would have prompted the appellant while on the telephone to stop her from giving out wrong information.

The work the appellant carried out was what MOR considered as quick work, one hits. It was busy but manageable. The appellant had been doing the job from 2006 but by 2007 she should have been well able to handle it.

MOR was to sit in on the training plan, a piece of work would be given to the appellant and it would be checked. A third party would oversee it and issues arising could be dealt with.

She was very surprised the appellant handed in her notice.

Under cross examination MOR said that she never remembered asking DT to wash her cup, and if clothes were on chairs there was a place to hang them up.

There were 11 mature people on her team and they would not have allowed her bully anybody or cause any problems. Her role was to help people not cause any trouble.

MOR stated that she was not aware of DT's accusations until she read her statement for the Tribunal.

MOR had no input into the files selected for the audit, people who have ratings of 2 require additional training. The 12 week training programme was new and MOR thought it was decided upon because DT believed there were no issues with her work.

DT had already got a lot of training (more than most) and it was taking longer than anticipated.

She would say that DT was a nice girl who had work issues.

ED *Team Leader* stated that she took the over-flow of work from brokers to make sure they got a proper service. She also does end of month reports on how people have conducted their work. Her team of 11 people are open and everybody gets on well.

ED had several conversations with DT and was not aware that she had any issues with her or the assistant team leader. She was aware of the issue with her mentor on the one to one training in 2006 but had got them to sit down and sort matters out.

In June 2008 DT said that she was stressed out by the brokers firm she had to deal with.

ED explained the situation to a colleague who worked at the broker's offices and he addressed the issues at the time. This was explained to DT but there was only so much he could do as they were good clients.

ED was aware that DT was applying for jobs and that she wanted to go back to personal insurance but there were no positions in Dublin.

Under cross examination ED stated that she did not recall telling the appellant not to cry when having the discussion with her mentor.

She was not involved with the audit or the report, it was the union and HR that set up the audit.

ED did mention the Employee Assistance Programme to DT as she thought she might have personal issues.

DT had been in a car accident and she did say she was stressed.

JC *H.R. Business Partner* in her sworn evidence stated that she first met DT in June 2008.

DT outlined her concerns with the broker and her role on the team, she also stated that she found the workload challenging and had been in a car accident.

JC explained that she would do what she could for her but that HR needed to understand her reasoning. JC also undertook to follow up with the team leader regarding the busy broker.

She spoke with KS and he explained the appellant's role in detail.

Areas of development were identified and also specific tasks that needed to be focused on.

DT was asked to attend a meeting with H.R. on 20th June 2008 and was advised to bring her union representative.

A pref. coaching plan had been agreed with the unions and was introduced in January 2008. The way the plan worked was to sign up to the plan and a meeting would occur once a week for one hour to agree what had to be included in training.

DT arrived at the meeting without any representative and the purpose of the plan was explained. It was to be for twelve weeks but DT said she wanted it to be eight weeks. It was verbally agreed for eight weeks and that MOR would be conducting the training.

DT thought about it over a weekend and decided against it, as per her e-mail of 23rd June 2008.

Her union representative then made contact with H.R. and another meeting was scheduled.

DT did not attend.

JC and the union representative agreed on an internal audit to try to resolve issues. Files would be looked at to see if further training was required and DT would have the right to comment on the findings. It was unusual for an individual to have an audit of their work carried out but a report could be generated from the files to see if training was required.

The audit was carried out by K *an independent senior member of staff*.

K did not meet with the appellant, as had been agreed by JC and the union representative. This was a miscommunication. Files were selected and the audit carried out.

A report of the findings was compiled.

From records it appeared that the report was sent to the union representative on the first week of August 2008. It was made clear to DT that she would be allowed comment on the report and JC felt that all the points were being worked through.

She was shocked that DT resigned.

Under cross examination JC was asked about contacting the appellant while on sick leave. She stated that it is mandatory that if a medical certificate is received citing stress as a reason of absence that the person be asked to see the company doctor. During the telephone call DT was friendly but later made a complaint to her union representative who in turn contacted HR and asked that the company did not contact her while at home on sick leave again.

Asked about the files selected for the report JC said that 20 files had been selected and given to her by the union representative.

JC did not see the exit interview which was done on-line by the appellant.

Determination:

From the evidence it appears that the appellant was more comfortable working with individual customer enquiries by telephone rather than with the more complex work of dealing directly with brokers. The respondent facilitated the appellants request to transfer, initially to Fleet Motor Insurance and then to the General Farm Insurance and attempted to facilitate her request to move to Trademarks. Unfortunately this meant that the appellant was on a learning curve in each new situation and this resulted in her attracting a 2 rating from 2005 to 2008, the scale being 1 – 5. In order to assist the appellant to improve her ratings, the respondent proposed that the appellant attend the standard coaching course of twelve weeks duration. Whilst the appellant actually agreed to undertake the twelve week course, within a twenty four hour period she retracted her consent to attend the course. Thereafter an audit of the appellant's work on her files over a six month period was agreed upon, which included the right of the appellant to have the opportunity to discuss the draft report of the audit with the writer before completion of the same. The respondent did not fully comply with the terms of reference, in that the report was forwarded to the HR department of the respondent prior to giving the appellant an opportunity to discuss the report with the writer. There was disagreement between the witnesses as to the scope of the review. The appellant also gave detailed evidence of a number of interpersonal difficulties with supervisory colleagues. This evidence was contradicted by the evidence of the respondent witnesses, none of whom shared the appellant's perception.

Having had regard to all the evidence adduced by both parties the Tribunal finds that the appellant was not constructively dismissed from her employment as:

- (1) She failed to make the respondent aware of any interpersonal difficulties whilst in employment in the area of general farm insurance.
- (2) She failed to co-operate with the proposal to provide coaching to improve her performance which had been below par for a period and which might ultimately have been the subject of disciplinary proceedings.
- (3) The audit was agreed to by the appellant, in consultation with her union representative. The failure of the respondent to provide an opportunity to the appellant to discuss the report with the writer before issue of the report was a matter of concern to the Tribunal but was not sufficient to warrant a resignation, particularly as the appellant did not engage with the respondent on the findings in advance of the resignation.

Accordingly the Appeal under the Unfair Dismissals Acts, 1977 to 2005 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd) _____
(CHAIRMAN