

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE-*Apellant*

UD933/2010

Against

EMPLOYER-*Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

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 27th June 2011 and 4th October 2011

Representation:

Claimant:

Mr Tomás Nyhan, Murphy Long & Taaffe, Solicitors,
Lower Kilbrogan Hill, (Opposite Courthouse), Bandon, Co Cork

Respondent:

Mr Patrick Mullins, Mullins Lynch Byrne, Solicitors,
Melbourne House, Model Farm Road, Cork

Background

The respondent in this case is an insurance brokerage, the staff complement of which comprised of two directors who are husband and wife and three clerical assistants. The claimant was one of the clerical assistants.

The two directors of the respondent company gave evidence. The confluence of which was that the claimant commenced employment with them on the 2nd of September 2008. They were satisfied with her overall work but found her to be over exuberant at times. On the 14th of January 2010 she was called to their office for a discussion on a variety of work related matters. One of the issues dealt with at the meeting which was a private meeting with the claimant, was that her

employers requested that she “tone it down” in front of the public.

This meeting was not in the nature of a disciplinary meeting but was merely in the ordinary course of the management of the business.

On the 21st of January 2010 one of the directors of the company accidentally came across the claimant’s social networking site, which was open on a computer screen in the office. She was shocked to discover that the company and she herself were described in disparaging terms. As a result of this discovery she consulted with her co-director and summoned the claimant, who was the author of the disparaging material to a disciplinary meeting. She advised her that she could bring a work colleague with her to the meeting, which she did. At the meeting she was confronted with the material that had been accidentally encountered and her employers asked her permission for them to have access to her face book site as they had concerns about there being a breach of confidentiality within the business and the claimant acceded to this request. She opened her facebook page and a number of electronic messages were discovered. Many of these were extremely disparaging of the claimant’s employers and contained a number of expletives. One in particular referred to one of the directors of the company as a “bitch”.

The directors of the company decided to suspend the claimant with full pay pending a further investigation and having conducted this investigation they had a further meeting on the 28th of January 2010 at which they dismissed the claimant for overuse of the internet and because they felt that the relationship of trust that existed between them had been breached.

Evidence was also adduced from the work colleague who attended the meeting.

The claimant on her own behalf said that she acknowledged that she had used certain regrettable words in e-mails during the course of her communications with persons outside of the business and that she had been disparaging of her employer. She said however that she had apologised for this. She also acknowledged that she was surprised at the level of non-business internet use that she had been engaged in.

She said that she was frightened of one of the directors of the company and was unhappy in her job. She told the Tribunal that she was very upset by what was said to her at the meeting on the 14th of January and this was what motivated her to write the inappropriate e-mails that were now being complained of by her employers.

The claimant conceded that the language that she used was offensive.

Determination

The Tribunal has carefully listened to and considered the evidence adduced on behalf of both parties during the course of the hearings of this case. The sending of electronic messages disparaging of the directors of the respondent company and which would have been personally offensive to one of the directors in particular, amounted to a breach of trust of such significance that the Tribunal feels that the claimant’s employment in the respondent’s business became completely untenable. This occurred because of the actions of the claimant herself. The Tribunal finds that the respondents acted reasonably in the manner in which they dealt with the matter up to and including their dismissal of the claimant from her employment.

In the circumstances the claimant’s claim for redress under the Unfair Dismissals Acts, 1977 to

2007 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

