

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE – **Claimant**

UD1995/2009

against

EMPLOYER – **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. R. Maguire B.L.

Members: Mr. R. Murphy
Mr. F. Keoghan

heard this claim at Dublin on 26 November 2010,
27&28 April and 26&27 September 2011

Representation:

Claimant:

Ms. Catherine Ardagh B.L. on the first day,
Ms. Alionora McMahon B.L. on the subsequent days
instructed by Ms. Jenny Wakeley,
James Watters & Company, Solicitors,
39 Arran Quay, Dublin 7

Respondent:

Ms. Angela Grimshaw on the first day,
Ms. Catherine Day on the subsequent days,
Both from 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:

This being a claim of constructive dismissal it fell to the claimant to make her case.

The respondent provides family support services and from 2003 has operated a respite crèche. Part of its remit is to assist with stress management and break down isolation for parents. It has received funding from FAS for personal development courses.

The claimant was a volunteer with the respondent from 1989. She commenced paid employment, as a childcare worker, in 2003 when the crèche opened. The employment was uneventful until September 2007 when there was an incident between the claimant, who was lead childcare worker (lead worker) in a team of six or seven childcare workers, and a member of the team (MT) over the prioritisation of duties that resulted in raised voices. The upshot of this incident was that MT went home early with the claimant demanding an apology from her and MT feeling she was due an apology from the claimant. The respondent's position is that the next day, following an enquiry by the crèche manager (CM), who was not on the premises when the incident occurred, MT offered several apologies to the claimant, which she refused to accept. The claimant's position is that no meaningful apology was offered. At the claimant's behest the chairman of the board of the respondent (CR) was involved in the discussions and arising from CR's involvement the claimant identified the need for training in the area of team building. The respondent was unable to provide this type of training, as they had no funding available for it. Funds were available through FAS for the provision of personal development courses.

CM had been a volunteer alongside the claimant prior to the opening of the crèche and been appointed crèche manager when it opened. The claimant and another well-established (since 2004) employee (AW) were the two lead workers. In October 2007 AW went on extended leave from which she had not returned before the claimant left the employment. It is the respondent's position that, initially, the claimant resisted CM's wish to appoint a replacement lead worker.

On 29 April 2008 a staff meeting was held to discuss the matter of staff uniforms. It is the respondent's position that management do not wear uniform, some time before this meeting agreement had been reached that lead workers would wear blouses as part of their uniform and the matter at hand was the question of uniform for childcare workers. The claimant's position is that both she and AW felt it unfair for staff to have to wear uniform when management did not.

The claimant attended this meeting and it is common case that the crèche administrator (CA), to whom CM reports, questioned the need for the claimant's attendance as the matter in question had nothing to do with the claimant. It is the claimant's position that CA suggested that the claimant was always causing problems and that the claimant thought this comment to be unfair. The claimant sought an apology from CA who had said she would think about it before adding that both CM and CA had issues with the claimant.

The next day, 30 April 2008, the claimant met CM and there was an exchange between them as a result of which the claimant asked for a list of the committee members and their addresses. The claimant's position is that CM brought up the September 2007 incident between the claimant and MT. CM had suggested that the claimant had been unhappy since that incident and was opting in and out of leadership. The respondent's position is that the claimant's behaviour during and after this meeting was such as to intimidate CM such that she suffered a panic attack afterwards.

When the receptionist gave the claimant the list of the committee members there was an altercation between the claimant and the receptionist. The following day the receptionist apologised for her part in this altercation. The claimant's position is that this was an apology that the receptionist was forced to make and was not made willingly.

Arising from the incidents of 29 & 30 April the claimant was issued with a verbal warning for opting in and out of leadership. She refused to accept the letter confirming the warning until it was sent to her by registered post. The claimant wrote a ten-page letter to the committee members complaining about CM's conduct. After a further exchange of letters in which she was reminded of

the procedures for lodging complaints against other members of staff the claimant, who was accompanied by a solicitor, met CA and a committee member, who happened to be the receptionist's husband, to appeal the verbal warning as a result of which its term was reduced from six to three months.

By this time the claimant felt that the friendliness and trust, which she had previously felt in the employment, had gone. The claimant and CM went to a mediator in September 2008; the findings of the mediator were not given in writing to the claimant until the start of this hearing but were made available to the board of the respondent. The claimant was offered counselling arising from this mediation. She was unwilling to access the counselling service, which is provided on the respondent's premises but did attend counselling elsewhere in the early part of 2009.

In late 25 November 2008 the claimant was changing a nappy when she discovered a thumbnail size mark on the abdomen of a child in the crèche. Protocol dictated that the claimant should have consulted CM or CA about this mark because of concerns over child protection issues. The claimant adopted a different approach, consulted a co-worker and determined that there was no issue. Accordingly, she made no formal report of the matter. As a result of this incident the claimant was issued with a verbal warning, which was not overturned on appeal, and taken off lead worker duties on 27 November 2008. On 12 December 2008 the claimant was involved in a further incident whereby there was a verbal exchange between the claimant and the lead worker over a child playing with a bag that did not belong to her.

On 19 December 2008 the claimant made a complaint of bullying against CM to the committee. An independent investigator was brought in to deal with the bullying complaint. The claimant met the investigator on 12 February 2009 and again a week later. Subsequently the investigator suffered ill health and was unable to complete her report. The recordings of the meetings she had held with the claimant were defective. The claimant, who was by now on sick leave due to stress, declined the respondent's offer to start the investigation with a different investigator. She resigned from her position with the respondent on 7 May 2009.

Determination:

Whilst the respondent may not have had a specific bullying policy, it had a policy that was broad enough to encompass bullying and harassment and it was entirely appropriate that the respondent invoked it. It is very unfortunate, as acknowledged by both sides, that the investigator became sick and was unable to complete her work. No responsibility for this failure to complete the investigation can be attributed to the respondent. The claimant, on the other hand, chose not to partake in the process any further once the investigator dropped out. There is an onus on a claimant in a case such as this to follow procedure and the claimant failed to do so. By her actions the claimant deprived the respondent of the opportunity to investigate/address the claimant's issues appropriately. The Tribunal is satisfied that the respondent was reasonable in maintaining contact with the employee. Management actions in all the circumstances were adequate in seeking to protect so far as was reasonably practicable the safety, health and welfare of the claimant arising from their duties under section 8 (2) (b) of the Safety, Health and Welfare at Work Act 2005 to the extent that they fall to be considered by this Tribunal. In the circumstances it was not reasonable

for the claimant to terminate her employment and the claim under the Unfair Dismissals Act 1977 to 2007 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)