

CORRECTING ORDER

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE - claimant

CASE NO.

UD937/2010

Against

EMPLOYER - respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr J. Horan
Ms. E. Brezina

heard this claim at Naas on 16th November 2011 and 23rd January 2012.

Representation:

Claimant: Ms Bernadette Thornton, Membership Information and Support Centre, SIPTU,
Liberty Hall, Dublin 1

Respondent: Ms Muireann McEnery, 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 Order corrects the original Order dated 10th February 2012 and should be read in conjunction with that Order.

The final sentence in the Order is hereby replaced by the following text "It is therefore determined that the claimant was not unfairly dismissed and his claim under the Unfair Dismissals Acts, 1977 to 2007 fails".

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____
(CHAIRMAN)

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The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant commenced employment as a security officer in April 2006 and worked for company G. After five years he was promoted to a supervisory role. He worked on a site in Kildare. Under the Transfer of Undertakings legislation the respondent was awarded the security contract in 2009 for the site and the claimant transferred to the respondent company. He was vaguely aware of the existence of grievance procedures being in place.

The claimant had been transferred to the mailroom. On 19th May 2009 he was unable to access his computer as he did not have his password. He immediately informed his security supervisor and G.McM came down to assist him. PH, Security Specialist passing his desk that day enquired as to why he was sharing a password with GMcM. The claimant had never been trained in on this role and he had e-mailed his supervisor to that effect. The claimant contended that GMcM did not share her password with him but that she logged into the system under her own password.

On 21st May 2009 PH approached him and said ‘good morning, how were things going’. The claimant asked her to leave him alone but immediately apologised to PH. A half an hour later the claimant was called up to PB’s office and he met him in the hallway. PB accused him of inappropriate language towards PH and not acting properly. Both their voices were raised. PB kept his face up to the claimant’s face. They both proceeded to PB’s office. PB opened the door and then bumped into him. The claimant took exception to this. They both proceeded into PB’s office and sat down at PB’s desk. CB was present in the office sitting at his desk. The claimant accused him of bullying him regarding the roster. PB said he could do what he liked. The claimant did not accept this. He was told to get out and go on mobile patrol.

The claimant rang his shop steward the day after and told him he had an issue with PB.

He attended an investigative meeting on 28th May 2009. He was unhappy at the meeting. He felt it was one sided. GF, HR questioned him on his actions. The claimant was surprised that PB was present but he did not object to him being there. He was hoping that PB would tell the truth. When the meeting ended things were out of hand on both sides. GF was not accepting what he had to say. The claimant had arranged a doctor’s appointment for that day as he had felt stressed and he was unable to keep that appointment.

The claimant furnished the company with medical certificates thereafter. On 21st October 2009 he emailed GF and said he would not be returning to work. He requested his P45 and has not received it to date.

His P60 was furnished to him in February 2010.

The claimant asked his union representative to arrange a meeting with HR in February 2010. The claimant attended a meeting with GF and his union representative. He enquired why he had not received his P45 and other matters were discussed. No agreement was reached and the meeting ended abruptly.

The claimant has not secured work since and is now in receipt of the old age pension

Respondent’s Case:

PB is site manager. On 21st May 2009 PH spoke to him in relation to an incident she had encountered with the claimant. She was unhappy with the way the claimant had spoken to her. He had told her to “get away from him”. PB immediately spoke to the patrol driver and asked him to relieve the claimant and asked the patrol driver to tell the claimant to report to him. PH also made PB aware that on 19th May 2009 she had seen GMcM sharing her password details with the claimant. GMcM said that the claimant did not remember his password and she was sharing her details with him so that he could do his work.

PB left his office to speak to the claimant and met him en route in the hallway. He told the claimant that he had received a complaint while he had been working at the reception area. After approximately two minutes the claimant became irate. The claimant then became very aggressive and enquired who had made the complaint. PB was reluctant to divulge the name of the complainant. The claimant said he was bullying and harassing him. They both proceeded to PB’s office. Entry to PB’s office is via two doors. PB swiped the doors and allowed the claimant to go

ahead of him. At the second door the claimant stopped and PB accidentally bumped into him. PB did not push the claimant. The claimant then became very defensive and said "don't push me". CB was present in PB's office. The claimant sat at his desk and PB questioned him about the incident with PH. PB did not want to make an issue of the incident and wanted to speak to the claimant off the record. He felt there was no need to make things official at this stage. He felt most issues could be dealt with locally and solved in a few minutes. The claimant demanded to know who had made the complaint. PB reassigned the claimant to patrol duties and the claimant accused him of bullying him.

The claimant complained of being put on the scrap run. Every security officer takes a turn to work on the scrap run.

The claimant had applied for a transfer to the mailroom. There are two computers in place, one for email and internet and one for badging. All employees have a password and the claimant was aware of normal procedures in place. PB passed the matter to HR.

PB was asked to attend an investigative meeting with GF, HR Manager on 28th May 2009. The claimant was present with his representative. The claimant did not object to PB being present. At that meeting the claimant contended that he had apologised to PH for his behaviour.

The claimant subsequently went on sick leave and refused to engage with the company thereafter. He had never lodged a formal complaint.

Determination:

The Tribunal carefully considered all of the evidence adduced. The claimant claims that he was constructively dismissed. The onus of establishing this rests upon him.

The Tribunal finds and determines that the circumstances surrounding the claimant's assertion of unfair dismissal relate to an incident involving contact between him and a third party which in turn result in further contact taking place between him and his employer.

It is found and determined that neither of these contacts resulted in any form of harassment or bullying being imposed upon the claimant as was claimed.

The Tribunal then gave consideration to a meeting called by the respondent to address the two contacts herein before referred to and finds and determines that while the presence of the employee of the respondent who had been present at the contact with the claimant was unsatisfactory despite the claimant having no objection that this meeting which was adjourned was investigative in its nature.

Consideration was finally given to the behaviour of the parties following this meeting. The Tribunal finds and determines that the claimant terminated his employment with the respondent despite being requested to engage in a process designed to enquire into any alleged improper treatment of him by the respondent.

The respondent therefore did not engage in any harassment or bullying of the claimant in the course of his employment. Consequently, the claimant has failed to discharge the onus placed upon him to establish that he was treated unfairly and unreasonably by the respondent so as to entitle him to terminate his employment and seek redress. It is therefore determined that the claimant was unfairly dismissed and that his claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

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This _____
(Sgd.) _____
(CHAIRMAN)