

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**  
EMPLOYEE  
- *Claimant*

**CASE NO.**  
UD1457/2010

Against

EMPLOYER  
- *Respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr T. O'Grady  
Ms M. Maher

heard this claim at Dublin on 12th December 2011  
and 23rd February 2012  
and 24th February 2012

#### **Representation:**

Claimant: Lorna Lynch B.L., Green And Company, Solicitors, Amber Hill, Kilpedder,  
Co Wicklow

Respondent: Ms. Mary Honan B.L., O'Mara Geraghty McCourt, Solicitors, 51 Northumberland  
Road, Dublin 4

The determination of the Tribunal was as follows:-

The Tribunal heard evidence from JH, the respondent, a medical doctor. He told the Tribunal that he has clinics in B, BS, H and MC. He employs two full time staff in B and 1 part time employee in the BS. The respondent recruited the claimant through the use of a recruitment agency. At the time he got the claimant's CV and several references. He thought that her CV and references looked good but did not check any of the referees. The claimant's CV showed that she had managed a family business from September 2002 until late 2007. JH was concerned about this and regretted not checking the claimant's references.

The claimant commenced working for the respondent, JH, in January 2008 and was responsible for general secretary duties. She was required to work 10 hours per day 4 days per week. The claimant would alternate her day off with the other secretary.

The respondent's work largely involved him doing procedures and checking patients in

hospital. He would see the claimant for brief visits, once or twice a week, while dropping off patient charts and typing. The respondent could not supervise staff because he would be unable to carry out procedures and be in the office and for this reason he felt that trust was hugely important. His attitude was that if the work was done and the phones were manned then that was fine. There was no procedure for staff to clock in and out of work.

The Tribunal that the claimant's employment started well. There were bouts of poor performance and friction intermittently. These included late arrival at the office, backlog of typing, complaints from patients and inappropriateness with patients on the phone. JH sometimes addressed these concerns and felt that he managed things well. They were sporadic problems and he addressed the issues verbally. The claimant would respond with self-defence.

In November 2008 JH received a complaint from a patient about the unprofessional service he received from the respondent's office and the rudeness of the claimant. JH contacted the claimant and made her aware of his concerns. He sent the claimant a letter of 26<sup>th</sup> November 2008 raising a number of issues. JH did not receive an adequate response from the claimant.

JH received an email from the claimant on 30<sup>th</sup> November 2008 in response to an email she had received from the respondent. JH is doubtful that he would have made some of the comments in the email. He does not recall saying that the claimant has a brilliant business mind and would not have said that her colleague was less capable than the claimant.

He signed an agreement with the claimant and her colleague in April 2008 in relation to salary reviews and permanency. Prior to signing this he had received huge pressure from the claimant. It was agreed at the time that the increase in salary would be based on an increase in incomes. One of the conditions listed in the agreement was an increase in consulting fees as this would be the mechanism to pay for the salary increases. However, this increase was only in place for 6 months and had to be reversed due to the economic climate.

The pay increases were due to take effect in April 2009. JH had a number of meetings with his secretaries and explained that things were not working out in relation to the increases and as a result they would not be applied. The claimant was not happy with the situation. Her colleague accepted that the economy was changing and JH explained that there would be no reduction in wages.

The claimant wrote to JH on 16<sup>th</sup> June 2009 responding to his position at a number of meetings. JH does not recall when he received this note and denied some of its contents. His relationship with the claimant was not peaceful at this time.

In September 2009 the claimant's colleague went on Maternity Leave and the respondent hired a locum, GOS who was known to the claimant. Things began to deteriorate from this point. Before Christmas 2009 things became chaotic. The claimant was coming in late, claiming overtime and time in lieu. It became difficult to run the office. One Monday in particular JH was in the office and the claimant arrived in late at 11am. He told the claimant that she should call him to make him aware if she was going to be late. If he gave her certain tasks they would not be completed. One of the secretaries told him that the atmosphere was poisonous. There was a lot of friction and tension and it was not a nice place to work.

The respondent received a lot of verbal complaints about the claimant, mainly in relation to interpersonal issues. In January 2010 he received a complaint from a patient in writing about how badly treated he was in the respondent's office by the claimant.

In January 2010 there was an incident in relation to time off. When requesting the time off the claimant told JH that she had arranged with the locum to swap her days off and that the office would be manned. When JH checked this with the locum she did not know anything about it.

On 28<sup>th</sup> January 2010 JH sent an email to the claimant retracting his agreement to the time off. He also informed her that he had received another written and verbal complaint about her and wished to meet with her to discuss her unsatisfactory behaviour. The claimant responded to the email and requested Tuesday as a day off instead of the Friday. She did not respond to the other issues raised.

JH does not recall having a meeting to go through the issues with the claimant. There was no proper meeting held with the claimant concerning the complaint. JH tried, unsuccessfully, to arrange meetings with the claimant. Each time he tried she was off sick or would go home as soon as a clinic finished.

On 29<sup>th</sup> January 2010 JH received a letter from a previous secretary who still worked in the hospital. She informed him that the claimant had made comments about successfully suing the clinic on two occasions and the claimant had also questioned her on JH's work ethics.

The claimant took her days off on 1<sup>st</sup> and 2<sup>nd</sup> February 2010, she was then sick with conjunctivitis on 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> February. In those two weeks it was very difficult for JH to arrange a meeting with the claimant.

In March JH received a letter from the claimant's solicitor dated 10<sup>th</sup> February 2010.

On 15<sup>th</sup> February 2010 the claimant was suspended from her duties. JH had requested to meet with her and she said no. JH told her he would have to suspend her until they could meet. A meeting was arranged for 3<sup>rd</sup> March 2010. The claimant attended with her solicitor. JH provided them with statements from other secretaries that he had interviewed and the claimant and her representative left the meeting to study them. The claimant subsequently refuted all allegations put to her in these statements.

When JH suspended the claimant from her duties he went to HR in the clinic for advice and they informed him that he needed to do a proper and objective investigation in order to decide whether to let the claimant continue in her employment. It was for this reason that he interviewed the claimant's colleagues and collected statements from them.

After the meeting of 3<sup>rd</sup> March there were a lot of proposed meetings. There was an hour long meeting on 18<sup>th</sup> March. At the first meeting of 3<sup>rd</sup> March JH offered terms of applicable disciplinary policy. He tried to give them to the claimant's solicitor at this meeting but she said they were not needed.

JH had sent letters clarifying the nature of the investigation and the documents of complaints, statements, were given to the claimant on the 3<sup>rd</sup> March. JH told the Tribunal that the claimant had received 3 verbal warnings and 2 written warnings. She had denied invitations to attend meetings. JH had told the claimant the issues he wanted to deal with and had also told her the

consequences.

At the disciplinary meeting on 18<sup>th</sup> March JH brought an agenda. His wife, CH, was the note taker at the meeting. The meeting lasted approximately one and quarter hours. They did not get to all of the issues listed on the agenda. One of the obvious issues that JH wanted to deal with was the previous complaints he received about the claimant. At this stage the claimant and her solicitor left the meeting.

JH wanted to provide the claimant with a fair hearing and after the meeting of the 18<sup>th</sup> March he outlined a letter summarising all of the problems with a view to organising another meeting. He offered a date of 30<sup>th</sup> March to the claimant for a new hearing.

After the meeting on the 18<sup>th</sup> March 2010 in an e mail to the claimant's solicitor he outlined that he was disappointed that the claimant and her solicitor left the meeting after an hour and a quarter and refused to sign the minutes. He outlined that the claimant was reporting late for work. He contacted Dr. F whom the claimant had previously worked for and he informed JH that he had let the claimant go due to problems in the office with other staff. He felt that the claimant's CV was false and had he known about this he might have considered her application differently.

He stated that the letter of 18<sup>th</sup> March is erroneous and it should have read that he may have no option but to discharge you from his practice. He did not receive a response to a letter dated 18<sup>th</sup> March 2010 sent by e mail to the claimant's legal representative

He was disappointed when he received a letter dated 23<sup>rd</sup> March from the claimant's solicitor in which it was outlined that they would not be attending any further meetings at this time. The claimant was paid until the 29<sup>th</sup> April 2010 and that was a final attempt to get the claimant's side to discuss the matter. All sick and holiday pay was paid to the claimant. He had received a complaint from a patient MM. The claimant's colleague GOS told him that the claimant was not in a happy place. He sent a letter to the claimant on the 1<sup>st</sup> April 2010 whereby he outlined that he had tried to have a total of eight meetings with her and failed to do so. He indicated that he needed her feedback and views for him to make a decision. He outlined he could not continue to pay her wages month after month without an opportunity to meet with her.

In a letter dated 9<sup>th</sup> April 2010 from the claimant's solicitor it was indicated that it was unfortunate that he did not consider the claimant's detailed responses to the matters raised by him and he failed to raise any further queries. It was regretted that he suspended the claimant without pay and had not discharged her from her employment. The claimant's P45 and a cheque for outstanding monies due to the claimant were requested. By response dated April 12<sup>th</sup> he responded that in the light of her refusal to take the opportunity offered on numerous occasions to put forward her full detailed responses in person to the various matters put to her he had no option but to make his decision based on the limited information she had made available to him. He had decided to terminate her employment with immediate effect and her P45 together with a final cheque would issue in due course.

He reiterated that he worked in four different hospitals and he could not monitor staff, it was done on a trust system and it always worked in the past. All employees contacted him when they were absent due to illness. He never came across an employee who reported four hours late for work. His former secretary managed the whole practice, he now had a situation that the claimant was not coming in for four hours in the mornings and she was not coming in on

Wednesdays. She claimed for overtime when she was not working. He had heard the claimant on the telephone being rude to patients. His office was within four feet of the telephone and he reprimanded her for this. A patient EOC requested treatment from him and he was put through to five different areas. The claimant treated patients in an inappropriate manner. If an employee performed well he let them know.

The claimant misbehaved prior to her suspension. He did not receive a medical certificate from the claimant when she was absent for almost three days with an eye infection. There were weeks and weeks of typing to be completed on files. He told the claimant her typing had to improve and that she should get through the typing. On the 18<sup>th</sup> January the claimant told him she had cover for the telephones and she did not.

Employees were given time off between Christmas and the New Year. He contacted the office on the 4<sup>th</sup> January 2010 and got no response. He never had sight of the letter dated 16<sup>th</sup> June 2009 from the claimant. A wage increase was based on an increase to patient fees.

He felt that the claimant's salary as a medical secretary was generous. He and his family transferred his medical insurance from Plan D to Plan B and if the Plan was good enough for the employer it was good enough for the employee. The claimant was paid an allowance of €1,000 for car expenses and a fee increase to the claimant in April 2009 was not tenable. The claimant was treated the same as her colleague. The patients complained about fees and as a result he reduced his fees from €230 to €200 and from €170 to €160. He tried to ascertain why her behaviour was so bad and he thought he could get her back on track. He did not want to let her go. The claimant had flashes of brilliance. One Christmas she carried the office while employees were absent.

He terminated the claimant's employment and he could not understand why allegations were not refuted properly. He could not have patients mistreated and a poisonous atmosphere in the office.

In cross examination he stated that the claimant was made permanent before her probation as he was under pressure to do so. He made the claimant permanent as she performed well. The only comment he heard regarding a patient EOC was from a nurse who told him it was totally inappropriate the way he treated her. He did not accept that a number of staff made complaints about EOC. EOC was told to come in at a specific time. He did not know if EOC was given the run around. He has known EOC five or six years, he is always positive and he never had a disagreement with anyone else. EOC complained verbally at the time, he may have received a written complaint from EOC and have discarded it. It was very difficult to get people to document matters in writing. He did not recall giving the claimant an unsigned statement from EOC and then producing the signed copy. He disagreed that it was his handwriting. This was presented to the claimant on the 15<sup>th</sup> February 2010 prior to meeting with the claimant and her solicitor.

He offered the claimant a permanent position in 2008 in advance of her probation expiring. He could not recall if there was a reduction in consultation fees in February 2009. He did not accept that a salary increase was unsustainable in 2009 compared to 2008. Patient attendance was down by twelve patients a day. He did not pay the extra money to the claimant. The claimant had periods of very good behaviour and there were sporadic problems. The first time he issued a letter to the claimant was in November 2008. He received a response from the claimant on the 28<sup>th</sup> and 30<sup>th</sup> November 2008. There was a problem with a plastic castor on the

claimant's chair which was resolved. After November 2008 matters were good between the claimant and the respondent and other problems were discussed verbally.

He would not tell an employee that you should marry a surgeon. He recalled the claimant raising an issue with him regarding Terms and Conditions of Employment and this was a stale claim. He did not recall telling the claimant in late 2009 that he would sort it out. At Christmas 2009 the claimant's colleague was ill and the claimant was in work every day. He agreed that at Christmas 2009 the claimant worked very hard and he recalled being impressed by the claimant's work output at this time.

He could not recall if the claimant had a problem with GOS but he was aware that there was friction between the claimant and the rest of the staff. GOS got into the routine quickly. He did not recall saying that the office would reopen after Christmas 2009 on the 6<sup>th</sup> January 2010.

GOS offered to bring the claimant to work in early January 2010 due to snow.

The claimant was very difficult to get hold of prior to suspension and he relayed an occasion he asked to the claimant if she could wait and she disappeared. He was surprised she was not in work on the 4<sup>th</sup> January 2010. He did not accept the claimant was snowbound as being in work. On several occasions in 2010 he tried to contact the claimant. Most of this was verbal. He wished the claimant would have come to him to sort out the issues.

He agreed he had not set out the disagreements to the claimant. He would have hoped that the issue of the claimant's timekeeping would be discussed at a meeting. GOS told him that the claimant was not in work on Wednesdays. The telephones were not being manned and GOS could not get in contact with the claimant. At the first meeting the claimant walked out. A patient RC complained to the witness regarding the bad treatment he had received in the office. It was not his recollection that the written complaint was never furnished to the claimant. He did not recall that GOS had agreed to man the office on the 29<sup>th</sup> January 2010. He wanted to meet with the claimant prior to her suspension and a meeting did not take place as the claimant was not available. He endeavoured to have a meeting at least ten days before the claimant was suspended. He asked the claimant to stay behind and talk to him but she had left the office between 5.30 to 6.00p.m.

On Monday 15<sup>th</sup> February 2010 he was very busy and he really wanted to meet with the claimant to resolve the issue. She was suspended as she was misbehaving with staff and patients and there was a very bad atmosphere in the office. An employee M refused to sign the statement which she made to JH.

Regarding the meeting where the claimant and her solicitor attended and the complaints were filed for the first time he replied the claimant could have told him her side of the story.

The meeting dated the 18<sup>th</sup> March 2010 was due to commence at 8a.m. and there was a ten to fifteen minute delay in starting. He was trying to give the claimant the opportunity and he followed protocol. He provided the unsigned minutes to the other side.

It was not true that he had to let a previous employee AD go. AD wanted to move on. He gave her €6,000.00 when she was leaving and it was not unusual to give secretaries gifts. She worked with another doctor and she is now a personal assistant to a TD. When asked about a pay increase to the claimant in April 2009 he stated that he gave her a cheque for €2000.00. He was of the opinion that Plan B VHI was the equivalent to plan D.

In re-examination he stated that the claimant wanted to have her contract of employment. When the claimant wanted something done she told you in a very direct way. His big regret was that he did not handle the meeting of the 18<sup>th</sup> March 2010 better. He did not think that the claimant was bullied or intimidated at the meeting.

As far as he could recollect all the information he had was sent to the claimant. The claimant did not receive terms of employment when she commenced employment. She was not provided with disciplinary and grievance procedures. His definition of a verbal warning was to talk and he did not have it documented in writing. He consulted with the HR department in one of the areas he worked in.

The second witness for the respondent GOS told the Tribunal that the respondent was a very fair and respectful employer. She commenced employment with the respondent in August 2008. Employees had very little supervision and JH worked sixty to seventy hours a week. When she commenced employment with the respondent the claimant had returned from two weeks leave. It was quite apparent that the claimant was not over enamoured with JH. The claimant was aggrieved about the fact that JH did not give her a pay increase. The claimant was very vocal and displeased about this matter and she came in late and was a law unto herself. GOS was new to the job. The claimant started work at 10 a.m. or 11.00a.m. some days. One day in November 2009 the claimant came in and JH asked her why she was late. The claimant was very angry about being asked this. GOS needed guidance and the claimant was not there to help her. She had queries she needed addressed. The first two weeks of employment she spent with JV.

The claimant's start time was 7.00 a.m. and GOS started at 8.00a.m. She recalled that she was in clinic H and she received a call from the claimant who asked her what she had told JH about her. She had no idea what the claimant was talking about. JH told her that he had received an allegation that the claimant was bullying her and he overheard the way the claimant spoke to her. GOS denied this as she feared for the claimant's job. GOS was employed to cover JV's maternity leave. After she had completed this her intention was to leave and hopefully obtain another job. The conversation with JH took place on a Wednesday at the end of January. JH asked her to keep a log of hours as he was concerned about excessive overtime. JH had told the claimant he wanted her to keep a log. GOS was not a confidant of JH.

GOS kept a record of her hours as well as the claimant's hours at the beginning November just to establish how many hours she did. She commenced in August 2008 and was at her weakest in August/September. As she was getting to know the job the claimant's work hours seemed to be increasing.

The claimant and GOS worked four days a week for ten hours. If the computer was down it was fixed quickly. She was always busy and if she did overtime she was given time off in lieu. She felt that she was doing the lion's share of the work. The claimant refused to record her time. At the end of each week she sent JH the itinerary for the next week and the hours worked from Monday to Friday. A computer company looked after the hardware. In February 2009 she contacted the PC company and she requested the PC company to check the logs. She was worried about anomalies in the claimant's hours that she claimed she had worked. VH came in and gave her a list of start-up times on the claimant's PC. There were two PCs in the office, one was not used by the secretary it was used by the consultant. The witness never applied for overtime. The claimant's attitude to patients was not great. The claimant reduced a patient to

tears and on another occasion a lady requested a report of her husband and she was reduced to tears by the claimant.

Patients attended JH for a scope and he did not see the patients beforehand. The secretaries were the ambassadors for the doctor and if patients had a bad experience it was upsetting for the patient and it affects the doctors business. The claimant was "spitting feathers" and was not happy.

One Wednesday evening she and the claimant had an exchange of words and the claimant later telephoned her at her home and told her not to come to work the next day. She did not know if the claimant had been drinking and she told her she was not in a position to fire her. The claimant then contacted her husband and told him that GOS was not to come to work.

On the 6<sup>th</sup> January 2010 the claimant telephoned her and told her she was not coming to work as it had started to snow at 11.a.m. She told her to tell JH that she was in work. The claimant asked her to log her on to her PC and she made her life a living hell for the next few days. When she returned to work on the 5<sup>th</sup> January there were over eighty voice mails on her telephone and she tried to deal with e mails and calls. The claimant decided to micro manage GOS.

In her statement to JH on the 3<sup>rd</sup> March 2010 she failed to tell him that on Tuesday November 10<sup>th</sup> both the claimant and GOS arrived at the same time for work. They collected their files. JV was due in office with her new baby. The claimant was jealous of the relationship that JV had with JH. There was an envelope addressed to JV marked "Strictly private and confidential". The claimant steam opened the envelope and a cheque from JH for €1,500.00 was in the envelope. She told the claimant she should not have done this and she was not sure why she had not told J.H. The claimant was quite intimidating and GOS allowed a lot of things to go on that should not be allowed. She did not recall calling the patients names.

She recalled where that she had to work a bank holiday at Halloween to catch up on her typing. She had considered the claimant her best friend. Her sister was also friends with the claimant. She lost her best friend as a result of this. She worked with the claimant years ago and they worked really well together

In cross examination she stated that on the afternoon of the 28<sup>th</sup> January JH asked her if the claimant had been bullying her as he had heard allegations. She was friends with the claimant for eighteen to nineteen years and the claimant got her the job. The claimant was on occasion very good at her job and she was aware that the claimant had experience as a medical secretary. The first two weeks of her employment JV trained her in. She had no previous experience as a medical secretary. She kept a record of the claimant's hours in November 2009 as she felt undermined in the job and the claimant was dismissive of her. As a result of the claimant's attitude she did not feel that the claimant was putting in her hours. She and the claimant worked alternate Fridays. The claimant left the office the same time as she did at the end of 2009.

Prior to 16<sup>th</sup> February 2010 she did not make a complaint about the claimant, she kept her mouth shut and she regretted it. She was there to cover JV's maternity leave and she thought that the claimant needed the job. One time she had an altercation with the claimant and she was intimidated by her. The claimant outside of work was a different person. She wanted



to continue her friendship with her. She knew the claimant did not like working with JH.

When put to her that the claimant requested that an accurate time keeping facility be installed she replied that JH asked for this and GOS also suggested that they retain a log. JH sent her an email which she copied to the claimant. It was very easy to provide log when it could not be changed and the claimant's overtime hours were incorrect. The claimant had to switch on GOS's pc in order for the claimant her to work on her computer. A text was shown to the Tribunal dated 16<sup>th</sup> November 2009 which indicated that the witness at 11.32a.m. was on her way. GOS said she could have been on her way to any place. The claimant took a lot of time off. JH was far more likely to praise than to criticise staff. The claimant maintained that GOS was not as good as JV at her work.

On the 8<sup>th</sup> January 2010 it would be easier for her if the claimant was in work as GOS could do some work. The claimant refused to come to work and she said the hill was too steep to drive. The claimant was printing off old information at home and appointments had to be made.

JV decided to return in March 2010 and GOS thought she would get a job elsewhere. When asked that no other employee made a formal complaint about the claimant she responded that another patient complained. She was not aware of any patient who did not attend the practice due to the claimant's behaviour. Regarding patient RC, JH had asked her to contact him and book him in as he did not want anything to do with the claimant. JH had not told her who made the allegation of bullying against the claimant but she found out months later. She knew that the claimant had issues with JH. A lot went on in the office when GOS was there. JH asked her how she found the claimant and how she got on with her. The claimant was very abrasive with patients. As far as she could recall she contacted the PC company in February 2010. She asked the PC technician to check the logs. JH did not say why he was getting her to do this. She was never excessively late for work.

She was interviewed by JH and there were no problems that she was aware of. JH told her that he was investigating an allegation of bullying and she recalled having a full discussion with JH about the claimant. The statement she made related to bullying. She did not know until the 16<sup>th</sup> February 2010 that JH had suspended the claimant. She lost her best friend as a result of the claimant's dismissal. She could not recall if JH told her that any information she gave to him could be given to the claimant.

In answer to questions from the Tribunal she stated that in a previous job they worked together in the same office but it was partitioned. It started to snow at 11.00a.m. on the 6<sup>th</sup> January 2010. She started keeping a note of the hours the claimant worked in November 2009 and she did so for her sanity. The claimant kept a list of overtime. The claimant reported for work later than she did. The only time she socialised with the claimant was at the Christmas party.

VH the third witness for the respondent told the Tribunal that the company he worked for provided computer support to JH. The claimant contacted him and asked him to go through logs. He went to the office and went through the PC. He went through all the logs and work times and he sent a copy of the claimant's log ins and the log in at the master workstation to JH on the 24<sup>th</sup> March 2010. The claimant's PC could not work without the master PC being switched on. If a computer was left on overnight the claimant's PC would be left on also. If there was a problem with the network it did not affect the power on the computer. He had a very good working relationship with the claimant. If there was a problem with the server that would not affect the computer; the claimant would have e mail access and still be able to print.

Mr. H the fourth witness for the respondent told the Tribunal he was an accountant and worked with JH for six or seven years. From 2008 to 2009 there was a fee increase of €71,000 which was 8.2%. In 2010 there was a fee increase of €42,000 which was 4.5%. At the end of the year he provided a P35 to JH. Prior to that he spoke to the claimant and GOS. It came to light that JH had paid a VHI payment for the claimant at year end 2009 and he was not informed of this. He had to re-gross the VHI payment as the cost to the employer was based on the gross before tax relief. He had to incorporate this into the claimant's salary calculations. The claimant's gross salary of €3083.33 was increased to €4,013.55 so that her net salary would not be affected.

He had some conversations with the claimant and he found her slightly aggressive. She asked him some questions and she was not happy with the response. The claimant asked him why JV was being paid more than she was. He asked her how she came to have that information and the claimant told him that she opened JV's wage slip. He was not aware that the claimant was friends with JV. He was aware that the claimant was unhappy with her salary.

### **Claimant's Case.**

The claimant told the Tribunal that she commenced employment with the respondent in 2007. JV worked with her from November 2007 until November 2008. In April 2008 the claimant and JV received a letter regarding salary. VHI was an extra allowance. Consultancy fees were to be raised and a salary increase was not a condition of raised consultancy fees.

She always completed her assignments within a timeframe. She had a problem with a chair and she consulted with JH about this matter and the problem was resolved. She relayed an occasion when JH asked her to contact an insurance company for a quote for the office. The person she spoke to asked her about other quotes and she responded that she could not give them that information.

She gave a patient EOC a direct telephone number as she could not put the call through directly to the office that he wished to contact. She returned from lunch and there were several complaints on her answering machine. After a meeting this matter was resolved.

In April 2009 her salary was due to be increased. She along with her colleague JV went to JH and told him that they were not accepting his terms. JH was happy with her performance. He told her due to the recession he could not afford to give her a pay increase. Both she and her colleague JV received an e-mail from JH on 29<sup>th</sup> April 2009 whereby he thanked them for their hard work. In correspondence dated 16<sup>th</sup> June 2009 she outlined her concerns to JH regarding her salary increase and VHI. JH told her he would sort it out at Christmas.

When JV went on maternity leave GOS joined the respondent and she did not have experience of working as a medical secretary. Both the claimant and GOS knew each other for nineteen/twenty years. The claimant arranged for GOS to come in for a typing test and she got the job. GOS was very good at everything she did. If the claimant was supposed to be in work she was there. From September to December 2009 the workload increased. She worked late from September 2009 to December 2009. JH accepted that she performed very well and he gave her a bottle of wine around December 2009 with a thank you note. She went out with GOS for her birthday on the 6<sup>th</sup> December 2009. Her sister was friends with GOS also. The claimant did not realise that there was anything going on. Both the claimant and GOS called to

each other's houses. She did not know anything about her rudeness to patients. On the 4<sup>th</sup> January 2010 she received a text from GOS and neither of them were in the office on that day.

She raised the issue of her salary again in December 2009 with JH and he told her he was never going to give her an increase and he told her she could sue him. She was in work on the 5<sup>th</sup> January 2010. In early January 2010 JH asked her to log in her hours. Overtime was done on a very casual basis and employees kept a log of hours worked. JH sanctioned the time off in lieu of overtime. The claimant helped a friend for two weeks during the lambing season and the other three weeks she went to Canada. In relation to overtime all employees were asked to log extra hours.

GOS was very good at her job but she was not up to the standard of her colleagues. GOS had no typing experience at all and she set up short cuts for GOS on the word processor. JH did not raise issues with her regarding logging of her hours of work. She first heard about a verbal complaint made by Dr MNC in the Tribunal. She sent an e mail to JH on the 29<sup>th</sup> January 2010 outlining that she had been requested to work three times when she should have been on a day off.

She sent a solicitor's letter to JH on 10<sup>th</sup> February 2010 regarding her contract of employment. Prior to the 15<sup>th</sup> February 2010 she had no recollection of JH requesting a meeting and no subsequent meeting took place. She received a call on the 15<sup>th</sup> February 2010. JH came to her desk and told her to leave with immediate effect that she was being suspended with pay. She asked JH to have this documented in the suspension note but he refused. The claimant was shocked and she collected her belongings and left the office.

By letter dated 17<sup>th</sup> February 2010 JH requested the claimant to attend a meeting on Wednesday 3<sup>rd</sup> March 2010 at 3.45p.m. By letter dated 24<sup>th</sup> February 2010 the claimant's representative requested details of documentary evidence that JH intended to rely on at the disciplinary meeting. She was not provided with documents in advance of the meeting on the 3<sup>rd</sup> March 2010 and the respondent did not have disciplinary procedures in place.

Complaints that JH had outlined and statement from her colleagues GOS, dated 3<sup>rd</sup> March 2010, an unsigned statement from M, an e mail from SC, a complaint from Mr. O'C dated 15<sup>th</sup> February 2010 and a statement from AD dated 3<sup>rd</sup> March 2010 were presented to her at the meeting on the 3<sup>rd</sup> March. These were not put to her previously. In relation to the statement signed by GOS on the 15<sup>th</sup> June 2010 the claimant stated she was ill on some of the dates mentioned.

A meeting took place on the 18<sup>th</sup> March 2010. In attendance were the claimant, her solicitor, JH and his wife who was the note taker. The claimant asked if she could be provided with minutes of the meeting. JH kept repeating the same questions. The claimant was out of a job.

She went to JH on a number of occasions. In a memo dated 18<sup>th</sup> January 2010 she asked JH to install an accurate time keeping facility.

In relation to a patient RC she asked him for his health insurance details. In relation to her previous employment she worked for MT for cash in hand, she worked for another doctor for three to four weeks. She was not let go by Dr. F. After she was dismissed she was out of work for seventeen weeks. She obtained alternative employment seventeen weeks later on the 8<sup>th</sup> August 2010 for which she earns €37,500.00 and she does not have VHI.

In cross examination she stated that an increase was not dependent on fees. JH discussed fees but the claimant and her colleague JV felt the fees were quite high and they were reduced.

Occasionally she and GOS would be out of the office during working hours. She was more shocked than angry on receiving a warning letter from JH dated 28<sup>th</sup> January 2010. It was not her work ethic to be rude to patients. She first saw the e mail dated 14<sup>th</sup> January 2010 from GOS to JH regarding GOS's hours of work at the Tribunal hearing. GOS suggested that they purchase a hardback notebook to log hours. The claimant reiterated that she was not rude to patients. She retained a log of her overtime in a notebook. The computer was down for a whole week at one time.

She had never seen JH behave like he did on the 15<sup>th</sup> February 2010 when he told her to leave the office or else he would get security. She recalled that she received an e mail dated 16<sup>th</sup> February 2010 from JH with a request for a meeting on the 17<sup>th</sup> February 2010 but she responded that it was not possible at such short notice to find a representative to bring to a meeting. JH refused to give her a reason for her suspension and under duress she signed the suspension note. She responded to the minute on the 16<sup>th</sup> February 2010 and suggested the 22<sup>nd</sup> February 2010 to meet.

She agreed that JH informed her that she could bring a representative to a meeting on the 3<sup>rd</sup> March 2010. After she was suspended she attended two meetings, the first meeting on the 3<sup>rd</sup> March. A further meeting was scheduled after the 18<sup>th</sup> March 2010. She was not given the opportunity at the meeting on the 18<sup>th</sup> March to raise issues regarding bullying allegations. She wanted to discuss the substance of a letter at a later stage. She did not respond to the letter dated 18<sup>th</sup> March from JH as she was told not to. She felt bullied at the meeting on the 18<sup>th</sup> March. At the meeting she was quite calm and she endeavoured to answer the allegations.

In answer to questions from the Tribunal she stated that in December 2009 JH told her that he would look after her and he said that he was never going to give the increase to her.

## **Determination**

Having heard all the evidence and the submissions of both parties the Tribunal are of the view that the claimant was unfairly dismissed. The disciplinary procedures were seriously flawed. The claimant never received any warnings in writing prior to her suspension with pay on the 15<sup>th</sup> February 2010. The respondent gave evidence that he had taken the claimant aside to raise complaints but these were not documented. The investigation was carried out after her suspension and statements were taken from various hospital employees by the respondent himself after the event.

The Tribunal were less than impressed with the evidence of GOS. While the claimant in correspondence was supportive and complimentary of GOS's contribution to the practice it appears from GOS's evidence that she was keeping personal notes of the claimant's time keeping and general behaviour and provided that information to JH while at the same time maintaining a personal friendship of long standing with the claimant. The fact that she now has the claimant's job casts doubts on her motive and credibility.

In the circumstances the Tribunal awards the claimant compensation of €15,078.15 under the Unfair Dismissals Acts, 1977 to 2007, which is calculated as €12,750.00 for her loss during the time she was out of work and €2,328.15 being the difference between her old and new salary.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

