

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE - **Claimant**

UD2096/2010

against

EMPLOYER - **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms O. Madden BL

Members: Mr C. Lucey
Ms P. Ni Sheaghda

heard this claim at Dublin on 29 February
and 20 April 2012

Representation:

Claimant:

Mr David Boughton BL, instructed by, on the first day,
Mr Brian O'Sullivan and on the second day Ms Rachel Carragher,
both of Howard Synnott Solicitors, Ballyowen Castle,
Ballyowen Shopping Centre, Lucan, Co. Dublin

Respondents:

HR Director of the respondent

The determination of the Tribunal was as follows:

This being a claim of Constructive Dismissal it fell to the claimant to prove her case

The claimant was appointed to the position of Senior Credit Control Manager from the start of her employment in April 2009. It is common case that she was very good at her job. Initially the claimant had three credit controllers working under her, this number increased to six when the reception function was incorporated into the claimant's area of responsibility. Her job title changed to Revenue and AR Manager

There were three different systems for billing in place when the claimant started and some two

months in to the employment she was requested by the managing director to put together a plan whereby the three systems would be merged into one. As part of the implementation of this process the claimant encountered some resistance in the traffic department. She lodged a complaint with the financial director to whom she reported against two employees in that department alleging bullying and harassment. The outcome was that the two individuals concerned were dismissed for gross misconduct. The claimant's position is that she had not been seeking their dismissal and everyone in the respondent knew it was her fault that they were dismissed.

A financial controller (FC), to whom the claimant reported, was appointed in January 2010 and around this time the claimant began to suffer from an undisclosed medical condition that left her in pain and caused her to have a higher than normal level of absence from work. The claimant's position was that FC would raise his voice to her and speak to her from the door of the open-plan office rather than lift the telephone to speak to her. On other occasions FC would stand over the claimant at her desk.

Although there is a dispute between the parties about who was in attendance, the claimant position is that a customer was there, the respondent's position is that the meeting was attended by the claimant, FC and the commercial manager, it is accepted by the respondent that FC cut the claimant off when she was trying to make a point to the commercial manager. It is common case that FC apologised to the claimant shortly after this incident.

The claimant took issue with an email sent to her about how to deal with a customer who had a problem with his account when the claimant sought the email address from a colleague. This led to a meeting in the boardroom where the claimant's position is that FC sided with the colleague that it was all a joke.

The claimant's position is that she was regularly undermined in her role and prevented from carrying out her duties effectively. She was not allowed to institute changes to alleviate problems with training and workload. She was not kept in the loop about decisions, reached with customers, which affected the way that they were to be billed.

As the claimant's medical condition, which necessitated a procedure shortly after the employment ended, proved increasingly troublesome the claimant continued to have a higher than normal level of absence. While there is a dispute between the parties as to whether medical certificates were furnished the claimant was paid for all the absences. The respondent accepts that at all times the claimant performed well in her duties including the way in which things were organised on those occasions when she was not in work. The claimant took issue with the way FC never enquired about her health, the respondent's position is that no certificates were furnished and the claimant never told them anything about her condition.

The claimant sought to be allowed to change her working hours by bringing the starting and finishing times forward two hours and also to be allowed to work from home on occasion. FC resisted these requests because all the claimants staff worked 9-00am to 5-00pm and wanted the claimant to be there when her staff were.

The claimant submitted her resignation by email to FC on 28 July 2010 it being cc'd to both the managing director and his brother. FC replied to the email later that day and offered the claimant seven days to reconsider her decision. The claimant was also offered the opportunity to raise any issues she might have at a formal grievance meeting the following day. The claimant did not accept this offer and her representative wrote to the respondent on 12 August 2010 confirming the decision to resign and alerting the respondent to the within proceedings.

Determination:

Just as in a claim of unfair dismissal there is an onus on the employer to follow any laid down disciplinary procedure then so must an employee in a claim of constructive dismissal show that any laid down grievance procedure has been followed. The claimant asserted that she never received a copy of the employee handbook which includes the grievance policy. Nevertheless the claimant's contract of employment, which she does accept having received, clearly refers to a grievance procedure. Earlier in the employment when two employees were dismissed, albeit against the claimant's wishes, the claimant clearly had a grievance and was well able to articulate her concerns in that regard. That being the case the Tribunal cannot accept the claimant's contention that she was not aware of the grievance policy. Not until the claimant submitted her resignation was the respondent aware in any formal sense of the claimant's problems with their treatment of her. Accordingly, the respondent was not in any position to respond to these issues until after she had resigned. The Tribunal finds the failure of the claimant to invoke the grievance procedure to be fatal to her claim of constructive dismissal. It follows that the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)