

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1492/2010

Against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Lucey

Members: Mr P. Casey
Mr D. Mcevoy

heard this claim at Limerick on 26th March 2012

Representation:

Claimant: Mr. Daniel J O'Gorman, O'Gorman, Solicitors, Munster House,
75a O'Connell Street, Limerick

Respondent: Ms. Sinead Mullins, IBEC, Confederation House, 84/86 Lower Baggot St
Dublin 2

The claim under the Unfair Dismissals Acts, 1977 to 2007 was one of constructive dismissal; accordingly it fell to the claimant to make his case.

Claimant's case

The respondent employed the claimant AB in July of 2008 as a section manager in the respondent's store. AB got eight weeks training and was then moved to a main supermarket branch. Four weeks after he began in the branch he was asked to move some shelving, it wasn't done ontime and his manager Mr Mc told him there was going to be major problems between them. Sometimes all was fine and sometimes he would get verbal abuse, one time a customer wrote to head office to complain after hearing the way he was spoken to. It prompted an investigation and a director of the respondent company made enquiries as to what had happened. AB had a review every 6 months and he was often told he wasn't good enough. He got reports to fill out that other managers didn't have to do and he often had to bring work home with him because there were not enough hours in the day. Following a move to the produce department AB then started getting reviews every Monday.

He would be told to pack bread, eggs and all kinds of stuff, there was not enough hours in the day. Sometimes Mr Mc was nice and other times he was a monster. Nothing constructive was ever said to him and he was told that he was the worst manager Mr Mc had had in 25 years.

AB was asked to step down from his managerial position following a performance meeting on 5th March and take up a position as a general assistant in the bakery. The stress became too much for him, he finished up and consulted his solicitor who wrote to the respondent on 19th March.

The claimant is still unfit to work to this day and suffers from panic attacks.

Under cross examination AB confirmed that he got eight weeks of training, he received a contract that included grievance procedures. His initial contract contained a six months probationary period. He received a letter from the respondent stating that they were not accepting his resignation but he had no confidence in the company to do anything about his issues, he didn't want to return and wasn't well enough to do so.

Respondent's case

Mr Mc the store manager stated that he was 33 years with the respondent. The claimant was initially placed in the non-food section of the store. There were 14 employees in that unit and the claimant's responsibilities included rosters, days off deliveries etc. It became apparent that he wasn't able to cope and Mr Mc was aware of personal issues that the claimant had. He asked that AB's probation period be extended rather than have him dismissed. Mr Mc also arranged for a move to "produce", it only had 5 staff and would give the claimant a bit of space. Constant reviews were carried out and he continued to have concerns about AB who was given a lot of support but it was not reciprocated.

AB had difficulty with very simple everyday routines, and Mr Mc was aware that the claimant had panic attacks and had problems but he couldn't put his finger on it.

A union agreement with the respondent is that rosters are produced fortnightly in advance, this was not being done on time. The holiday chart also had to be taken off him and he couldn't plan days off.

Mr Mc had no problem with AB as a person but he never had things done, he always forgot or didn't know how or just shrugged his shoulders.

At the meeting on 5th March Mr Mc knew he wasn't getting anywhere, stock was short, the computer system was erratic, absence was a problem, no returns to work were done and staff reviews had not been done. He probably should have terminated the contract at the end of the probationary period. Management was not AB's forte and he was not mentally strong enough for the job.

Mr Mc also stated that there are 200 employees, the job is unionised and nobody would take his side if he was bullying anybody. His job was to develop managers and had done so with 17/18 people previous to the claimant. He was surprised at the claimant's decision to leave as he would have had a job in the current climate.

Under cross examination Mr Mc stated that his personal views overrode his professional ones, he knew of the claimant's personal difficulties and should not have listened to it.

Asked about shouting at the claimant he said that he had a hearing problem and may speak louder than others, he never used profanities.

It was evident at the end of the day that the claimant wasn't able to make it as a manager. He was not able to deal with issues.

ER, personnel manager gave evidence that the claimant would have been aware of the grievance procedure. She was aware of his performance issues and would have provided help and support on a daily basis. ER took over the allocation of holidays from the claimant as it was not done properly.

Determination

This case came before the Tribunal as one of Constructive Dismissal, therefore it fell to the claimant to make his case.

The Tribunal are not satisfied that there was sufficient evidence of bullying or harassment and find that the claimant did not meet the burden of proof required, therefore failed to meet the threshold for a constructive dismissal. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

