

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD1209/2010

against
EMPLOYER
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S C
Members: Mr. A. O'Mara
Mr. J. Moore

heard this claim at Drogheda on 4th January 2012

Representation:

Claimant:
Esther McGahon, McGuinness & Co, Solicitors,
Kilgar House, Jocelyn Street, Dundalk, Co Louth

Respondent:
Mr. David Farrell, IR/HR Executive, IBEC,
Confederation House, 84/86 Lower Baggot Street, Dublin 2

Dismissal was in dispute and the claimant argued that she was constructively dismissed. Therefore the claimant was required to give evidence first.

Claimant's case

The claimant commenced employment with the respondent on 23rd August 1999 as a Production Operator. The events that led to her resignation on the grounds of constructive dismissal spanned a period from 8th March 2010 to 20th March 2010.

On 8th March 2010 a colleague of the claimant injured her finger while using a machine at work. On 9th March 2010 the claimant's supervisor (E. McC.) asked her to sign a document stating that she had been trained on this machine. The claimant was not happy to sign this but did so because she felt bullied and pressurised. The claimant subsequently requested a meeting with the Manager (P.K.) and was informed that he would meet with her on 11th March 2010. At this meeting P.K. initially discussed the claimant's time keeping record and issued a verbal warning in respect of this. The claimant raised the issue of her complaint and became quite tearful. On her return to the factory floor the claimant felt shunned by her colleagues and one of them said to her "You think nobody is talking to you. I will give you nobody is talking to you".

According to her representative, the claimant felt that her trust had broken down and she resolved not to return to work. She did engage in the investigation process but her representative argued that this was of no relevance.

There were other incidents on the 11th and 12th March that led the claimant to believe that what she had discussed with P.K. had been divulged to her colleagues. She left work at about 11:45 and has not returned to work since then. The claimant rang the respondent's office and informed them that she would not be coming back after what P.K. had told others about her. Subsequently the claimant went to her solicitor and she knew she would not be able to go back to work. She participated in the investigation that took place between 30th March and 9th April 2010 but knew that it would not be fair as there was nobody there who knew what went on. The claimant only took part because she had been asked to do so by another Manager (Pt. K).

In a letter dated 16th March 2010 the claimant's solicitor informed the respondent that the claimant felt she had no option but to resign from her position and that the claimant intended to lodge an application with the Employment Appeals Tribunal for Constructive Dismissal within a period of seven days from the date of that letter. This letter went on to state that "should you wish to make any proposals to our client within that period we will of course furnish same to her in an effort to explore whether any resolution of these issues is possible within that time. Should we not receive any such proposals our client will proceed as above and will also seek the issue of her P45. There was no further correspondence from the claimant's solicitor to the respondent.

Determination

Having considered the evidence adduced by the claimant the Tribunal is not convinced that she has a case for constructive dismissal. The claimant has not demonstrated that she took steps to address her grievances before deciding to resign. She clearly resigned on 16th March 2010 and this was before the respondent had an opportunity to investigate allegations of bullying.

Just as there is an onus on an employer to use agreed procedures when contemplating disciplinary action, up to and including dismissal, against an employee there is equally an onus on an employee contemplating a claim of constructive dismissal to follow agreed procedures. If an employee resigns and then claims constructive dismissal without giving the employer the opportunity to deal with the grievance, which the employee has, it is hard to see how such claim can succeed. The Tribunal finds that the claimant did not discharge her onus and therefore the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)