

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
UD1201/2010

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr. P. Casey
Mr J. Flavin

heard this appeal at Cork on 22nd November 2011 and 3rd April 2012

Representation:

Appellant : Mr Daniel Johnson, Johnson & Company, Solicitors,
The Business Centre, Ballinlough Road, Cork

Respondent : Mr. Eamonn McCoy, IBEC, Confederation House,
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

This case came before the Tribunal by way of an appeal by the former employee against a recommendation by a Rights' Commissioner ref. no. r-088096-ud-09/TB

Respondent's Case

The respondent is a multi-national company providing retail services and outlets to the general public. Among the documents it issues to its employees is a paper entitled Anti Bullying and Harassment Policy. It has eleven such outlets in this jurisdiction and among its staff are three human resource advisers who were involved in this case.

The first adviser met the claimant on three occasions between 10 July and 10 September 2008 where his issues regarding leave and his relationship with his line manager were discussed. By late August she had received a written list of several grievances from the claimant. She also attended a further meeting as note taker with him and his line manager on 18 September. She told the Tribunal that this was a successful meeting and felt that the issues between those two had been resolved. Subsequent to that meeting this witness had no further involvement in this case.

By early summer of 2009 the second human resource adviser was in written communication with the claimant's contemporary legal representatives. On 17 June she asked those representatives to furnish the respondent with a detailed signed statement of allegations/incidents involving the claimant in order to allow the company to progress the matter. This witness never received that statement and later that month went on maternity leave. The ongoing interaction between the parties then reverted to a third human resource advisor.

That third advisor read the second report dated 27 August 2009 presented by an occupational physician on the condition and well being of the claimant. She also received a letter dated 17 September from the claimant's solicitor. That letter stated *inter alia*, that the claimant was aware of the general obligation placed on him to exhaust all internal remedies. A request was made to have his grievances dealt with externally. While not rejecting that approach this witness proposed in a letter written to that representative on 25 September that an independent person from the respondent carries out an investigation.

This witness recorded receiving a letter from the claimant on 28 September. That letter contained the news that the claimant was tendering his resignation with immediate effect. In reply this advisor expressed her disappointment at that development and asked the claimant to reconsider his decision. She also accepted that his formal grievance raised earlier had not been dealt with and that those grievances and other allegations needed to be addressed and resolved. The claimant was invited to submit a signed statement of his complaints to allow the respondent to fully investigate all issues he had. The letter writer reminded the claimant that he had not exhausted all internal procedures. No investigation ever took place as the claimant declined that invitation and sought his P45.

The claimant's former line manager was involved in filling in several return to work interviews forms with the claimant. Apart from her comments on those forms she had no recollection of other outstanding issues being raised by the claimant. This witness referred to an incident in which the claimant went home from work following a conversation she had with him about the comments of two assistant female staff towards his work. It was her impression that following a mediation meeting with the claimant that all issues between them had been resolved. She was surprised to learn of his allegations of bullying made against her.

Claimant's Case

The claimant commenced employment in October 2006 at a visual assistant in a suburban branch of a large retail department store. From the early summer of 2008 up to the time of his resignation in September 2009 there were a number of disputed incidents and allegations between him and the respondent. These included events surrounding his attendance at a musical concert, a report that he was actually trespassing on the respondent's property, a recommendation that he was not suitable to participate in a training programme, a refusal to grant him leave on his chosen dates, an objectable oblique reference to him in a text message, and an accusation that he was being harassed and bullied by his line manager. He was particularly critical of her in recording comments made by him in an open file on an accessible computer.

Over time his absentee record noticeably deteriorated to the extent that he exhausted his entitlement to paid sick leave in 2009. The claimant while accepting that his signed return to work interview forms appeared normal and supportive told the Tribunal that those forms did not reflect the reality of his situation. He was displeased and frustrated at the length of time it was taking the respondent

in properly addressing his concerns. That period could last up to three months and that gave him the message that his issues were not receiving appropriate attention.

The claimant who attended a number of meetings with human resource personnel and his line manager expressed written satisfaction with those gatherings. However, he was not happy with the notes of those meetings. It was not that the respondent neglected to deal with his grievances it was more the manner, tone and approach that upset him. The witness was unable to say whether his former legal representatives forwarded a formal complaint on his behalf to the respondent as requested by the company. He certainly had formal complaints but by early summer of 2009 had not committed them to writing. From the end of May 2009 he was absent from work due to work related stress and his doctor sent reports to the respondent's medical team who in turn reported to the company.

In a letter dated 24 September 2009 the claimant tendered his resignation. He identified two managers who he stated had relentlessly bullied and intimidated him since April 2008. He added that no real attempt had been made to resolve his grievances and he was forced to leave the respondent as conditions there were having a negative impact on his emotional, mental and physical health. The company's offer to investigate and address his grievances was, in his opinion, too little too late. In late September 2009 the claimant commenced work elsewhere.

Determination

In constructive dismissal cases the onus rests with the claimant to show that he/she fully uses and indeed exhausts a grievance procedure before actually involuntarily resigning their position with a respondent. Both parties must act reasonably where a dispute occurs between them. While the respondent's behavior in this case was reasonable it was somewhat slow in dealing with the claimant's complaints. The Tribunal does not accept that the claimant fully exhausted the grievance procedure and his action in resigning was premature. He also declined subsequent efforts by the respondent to resolve any outstanding issues he had with his employer.

Having considered the adduced evidence the Tribunal upholds the recommendation of the Rights' Commissioner in this case. The appeal under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

