

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE – *claimant*

UD1767/2010

against

EMPLOYER – *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. J. Lucey

Members: Mr. J. Hennessy  
Ms. S. Kelly

heard this claim in Clonmel on 1<sup>st</sup> May 2012

Representation:

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Claimant: Ms Cliona Cleary B.L. instructed by Mr. Kieran W Cleary, Cleary & Cleary, Solicitors, Law Chambers, Market Street, Clonmel, Co Tipperary

Respondent(s): Purdy Fitzgerald, Solicitors, Kiltartan House, Forster Street, Galway

### **Background**

#### **Respondents Case**

RB is the Retail Plant Manager with the respondent. The claimant joined the company in 2002 as a general operative and was moved to the quality assurance section as a 100% checker of prepack meat.

On the 26<sup>th</sup> February 2009, the claimant had an accident in the workplace and went on sick leave. RB phoned the claimant on the 3<sup>rd</sup> December 2009, with the purpose of getting her back to work. He asked her if she would attend a consultant which she agreed to do.

On the 7<sup>th</sup> December, the claimant phoned to say she had spoken to her Solicitor and that she would be available to meet the consultant on the 11<sup>th</sup> December. Following her assessment the consultant said there was “no objective medical reason” why the claimant could not return to work and perform her duties safely and effectively.

On the 16<sup>th</sup> December RB wrote to the claimant with a view to returning to work on a phased basis starting with three hours a day for the first week building up to eight hours a day on week six. The claimant was paid her full wages while she was working reduced hours.

The claimant started back at work on the 11<sup>th</sup> January and worked the three hours. She asked to meet RB at the end of her shift and told him she was “in bits” after working the three hours and was not able for this. The claimant suggested she work three hours every alternative day to give her time to rest. RB suggested the claimant work one hour a day and start later which she agreed to do.

On the 13<sup>th</sup> January 2010, the claimant asked RB if he could organise a seat for her so she would not have to stand while working. On the 15<sup>th</sup> January he told the claimant a bum rest would be fitted to her workstation on the 15<sup>th</sup> January to be ready for the following Monday. The respondent conducted a risk assessment of the claimant workstation, and even though they were not necessary, added a cushion plate and mat.

On Friday 22<sup>nd</sup> January, RB met the claimant and asked her if she would work five hours a week from the 25<sup>th</sup> and she agreed to do this. The claimant also asked if he had received a letter from her Solicitor seeking her medical records. He told the claimant he had not received the letter.

On the 25<sup>th</sup> January he had another meeting with the claimant and told her he had received the letter from her Solicitor and had passed it on to their legal representatives. The claimant told him five hours was too much and said her life was turned upside down since the accident.

On the 27<sup>th</sup> January the claimant worked for two and a half hours and told the production manager she could not stand any longer. The claimant did not attend work on the 28<sup>th</sup>.

On the 28<sup>th</sup> January, he spoke with the claimant on the telephone. She told him she had gone to her doctor and would be out for the week. RB told her the company had its own doctor and he would have to talk to others to see if they would accept this cert. The respondent did accept the cert and referred the claimant to the consultant for a second time.

The claimant was assessed by the consultant on the 10<sup>th</sup> February and was advised she was fit to return to work on normal duties and normal hours.

On the 9<sup>th</sup> March, RB telephoned the claimant to arrange a meeting. The claimant had the vomiting bug and was not available to meet.

On the 10<sup>th</sup> March he sent the claimant a letter inviting her to attend a meeting on the 18<sup>th</sup> March at 2:00pm

On the 18<sup>th</sup> March, he sent the claimant a letter requesting a full medical report based on her doctors absentee certificates. There was no reply to this request.

He then wrote to the claimant on the 21<sup>st</sup> April, the 13<sup>th</sup> May and the 26<sup>th</sup> May without response.

On the 1<sup>st</sup> June 2010, he sent the claimant a P45 and the outstanding monies that were due to her.

RB said the claimant's role was important to the business and he had tried his best to get her back to work after her accident. When the claimant came back to work he accommodated every one of her requests but every morning it appeared there was something in his way.

During cross-examination RB said he accepted the consultants reports that the claimant was fit to return to work. The consultant had said it would aid her recovery. He was not saying that others doctors were wrong, but he had two reports to say she was fit.

He said on the claimant suggestion, new procedures were introduced. The claimant had cooperated on her return to work but left him in no doubt she could not continue.

### **Claimant's Case**

The claimant started working for the respondent in 2002 and in 2008 she moved to the Quality Assurance (QA) section. Her role in the QA section involved standing in the same spot for eight hours between breaks. She had an accident in work and went sick.

In December 2009, she went to the consultant at the employers request and told the consultant standing was her biggest problem. The claimant was willing to return to work.

The respondent made up a schedule and she went along with this. Standing was impossible, after three hours standing, she tried to walk and her leg went from under her.

In February 2010, she went to see the consultant again, and the examination only lasted ten minutes. She would have liked to return to work.

When she got the letters from the respondent she gave them to her Solicitor. She was not ignoring them. There was no follow up phone calls from the respondent to the letters.

During cross-examination the claimant said she had had an operation the day before the hearing and was not yet fit to return to work. She did not know if she would have been able to work between June 2010 and May 2012.

In February 2012, she was not able to do the work. She went to her local doctor and was sending in certs each week. She gave the letters to her Solicitor but did not phone the respondent.

KC is the Solicitor for the claimant. He said he did not receive the letters for the claimant, if he had he would have responded to them immediately. KC said the claimant was under a lot of stress at that time.

### **Determination**

The Tribunal having carefully considered the evidence adduced at the hearing prefers the evidence of the respondent and finds that the respondent behaved reasonably in the circumstances.

The respondent relied on the expertise of an external occupational specialist to decide if the claimant was fit to return to work. A schedule was agreed to reintroduce the claimant back

into the workplace on a phased basis, and changes were made to the claimant's workstation. The respondent sent five letters to the claimant without response and was left with no alternative.

Accordingly, claim under the Unfair Dismissals Acts, 1977 to 2007 must fail

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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