

## EMPLOYMENT APPEALS TRIBUNAL

**APPEAL(S) OF:**  
EMPLOYEE – *appellant*

**CASE NO.**  
UD2183/2010

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

EMPLOYER  
EMPLOYER  
- *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. D. Winston  
Mr F. Barry

heard this appeal at Dublin on 23rd March 2012

#### Representation:

Appellant: Dominic Dowling, Solicitors, 37 Castle Street, Dalkey, Co Dublin

Respondent: Mr. Brian O'Sullivan, IBEC, Confederation House, 84/86 Lower Baggot Street,  
Dublin 2

This case came before the Tribunal by way of an appeal by an employee appealing against the Recommendation of the Rights Commissioner Ref: r085496-ud-09/RG

The appeal under the Unfair Dismissals Acts, 1977 to 2007 was one of constructive dismissal; accordingly it fell to the appellant to make her case.

#### **Appellant's case**

The appellant gave direct sworn evidence. She commenced employment as a supervisor in a bar in February 2004, it was a good position and she liked it. GL started as the general manager a few months after her. Around the autumn of 2008 GL's attitude towards staff and especially her changed. With the recession there was more pressure put on them, and when GL was in a bad mood he could treat you badly. If you approached GL to speak with him, he could walk off mid-conversation. GL told her during a course of a conversation that she was on a salary and they expected more from her and she was not working hard enough. On Sundays it would be very busy at the hatch and GL would be constantly on her case. It was agreed between all staff as part of the cut backs that they would all do additional cleaning that was not normally part of their

duties. She was in work one day when GL called her in to the Gentlemen toilets and asked her to clean them, this upset her as it was not part of her job. While working for the respondent she had never a customer complaint lodged against her. At no point did GL sit down with her on a one to one basis and discuss her role with her.

After Christmas 2008 she dreaded going into work because of GL's attitude. She maintained that if GL did not like you, you either walk or got the sack.

On Friday 13<sup>th</sup> February GL was meeting with one member of staff (L) in the bar area when the appellant was called up to them. L was agitated and asked the appellant did she not want to work with her anymore. The appellant tried to calm the situation down, she knew something was amiss with L, but GL ordered her away. Since that day GL practically ignored her. She knew that the respondents in their case was going to raise the issue with the rosters and the fact that her and her fiancé who also works in the respondent were not getting time off with each other. She maintained that she had no issues with the rosters, if she wanted a day off she just wrote on the end of the roster. She was not aware of the grievance procedures in place as she was never given a copy of same.

After the incident of the 13<sup>th</sup> February 2009 she contacted one of the directors G, who she had a good working relationship with. She told him that she needed to speak with him and she arranged to meet with him in a local café the following Monday 16<sup>th</sup> February 2009. At this meeting she told G about the meeting between GL and L, her issue with being asked to clean the toilets and the fact that GL had taken a dislike to her. She also told him how she felt going into work. G was very supportive and told her he would speak to GL. She never mentioned the rosters to him.

She did not see G until the 22<sup>nd</sup> February 2009, G asked her how she was and she told him that she was no better. G told her he could sense the tension. On Monday 23<sup>rd</sup> February 2009 she was rostered to commence work at 5.00pm; GL informed her that he wanted to speak with her. They went into the restaurant, GL said to her "so you went to G about me" she replied she had to as he was not approachable. GL got annoyed with her, and shouted to her about her earnings. He also told her "your waterworks don't work with me". The appellant was upset and told him she could not take anymore and left the premises. Nobody from the respondents contacted her after this.

Under cross examination she denied that the meeting she had with G was about her hours of work and rosters. She accepted that as she and her fiancé were both supervisors it would not make sense that they both worked the same shift. She agreed that when her mother died both her and her fiancée had a week off together. She denied that on two previous occasions she had walked out of the premises and resigned. She explained that in January 2009 GL had gifted her and her fiancé a voucher for a hotel to thank them for covering some shifts for him as his wife had a new baby. In respect of cleaning the toilets, while the staff had agreed to clean the mirrors, sinks and floors, the urinals or bowls were not included in this agreement.

The appellant gave evidence of loss.

The appellant's fiancé gave evidence. He explained the only issue that both of them had with the roster was the week after the 16<sup>th</sup> when the appellant had spoken with the GL. That week they were looking for a specific day off together he had spoken to GL about it and GL had just walked off.

They never had any other issue with the rota. Most of the staff who have left approached him for a reference rather than GL

### **Respondent's Case**

A company director G gave evidence on behalf of the respondent. He is a company director since 2003 and is involved in the day to day running of the business. He first became aware of the appellant's problems when she telephoned him and informed him that she had a problem with job related issues. He met with her and she told him that she was dating her fiancé and the rosters were a problem as they were finding it hard to spend time together. He had no previous indication that the appellant was unhappy in her job. They had a good working relationship.

At this meeting he explained to her that the business was run on a day to day basis by the general manager GL and she should talk to him. He also explained that in their business supervisors had to work back to back. The appellant felt that GL should be more supportive of their situation and understanding regarding rosters. He told her he would speak to GL and arrange a meeting for the Friday 27<sup>th</sup> where they could discuss the issues.

Under cross examination he confirmed that rosters were the only issue that the appellant had raised with him at this meeting. Nothing else was discussed at this meeting.

GL the general manager gave direct sworn evidence on behalf of the respondent. He commenced with the respondent in May 2004. G the director had spoken with him after he met the appellant and explained the appellants concerns regarding the rosters. He in turn spoke with the appellant's fiancé that afternoon and assured him that he would give them a day off together. He spoke to the appellant the same evening and told her the same. The appellant became agitated with him and had said he was trying to get rid of her.

There had been two previous occasions where the appellant had walked out of work. The appellant had an argument in the car park with one of their customers, the customer had complained to him. He spoke with the appellant the following day who said she had enough and walked out. The second was when she had an altercation with a customer one evening and as a result of this incident he suggested a management course to the appellant. He confirmed he had given the appellant and her fiancé the gift of a hotel voucher to thank them for working so hard over the Christmas period.

Under cross examination he explained he was not annoyed when G had told him that the appellant had spoken to him, however he did not think the appellant should have gone over his head. At the meeting with the appellant on the 23<sup>rd</sup> February 2009 the appellant had told him that she felt that she was being singled out and it was unfair. He had explained to her that as both her and her fiancé were supervisors they had to work back to back. The only issue the appellant had was the rosters.

### **Determination**

The Tribunal carefully considered the evidence adduced at the hearing noted that the appellant did not attend the meeting arranged by the director to discuss her grievances with the general manager. The appellant did not pursue the internal avenues available to her to rectify her grievances. The Tribunal finds the failure of the appellant to invoke the grievance procedure to be fatal to her claim of constructive dismissal; accordingly the Tribunal uphold the recommendation of the Rights Commissioner under the Unfair Dismissals Acts 1977 to 2007 in determining her claim

fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

