

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1505/2010

MN1442/2010

Against

EMPLOYER

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Lucey

Members: Mr G. Andrews
Mr D. McEvoy

heard this claim at Limerick on 27th March 2012

Representation:

Claimant: Mr. Gerard O'Neill, O'Neill & Co, Solicitors, 25 Glentworth
Street, Limerick

Respondent: Mr. Gary O'Mahoney, IBEC, 84/86 Lower Baggot Street, 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

SB began employment with the respondent in August of 2007. He worked as a fitness instructor/leisure attendant. His employment was largely uneventful until a change of managers occurred and he became responsible to a lady named as MB.

The claimant felt quite quickly that she had issues with him, he didn't like how she spoke to him, made snide remarks about him and he felt demoralised by her. He loved his job but ended up not

wanting to go to work. Various incidents were recounted where the claimant felt undermined including a report he had written where he was asked if he had done it himself as “ the English was too good” and asked if the L on his motorbike stood for looser.

He tendered his resignation on 19th February 2010 giving a week’s notice to his employer and ended his employment on 26th February 2010.

SB had an informal exit meeting with ED the general manager, he discussed with her why he felt he had to leave and drafted a letter dated 26th February outlining his reasons. She asked him if he was maybe “taking things a bit too seriously”. There was a further meeting proposed but it never happened, he had left at that stage anyway and didn’t think he would have been taken seriously. Henow suffers from anxiety and stress and is on medication.

Under cross examination SB stated that he was not familiar with the grievance procedures, he didn’t read it in great detail even though he had signed it.

He didn’t want to “rock the boat” and was afraid if he said anything to anybody it might affect any future employment he would seek.

Asked if ED wanted him to retract his resignation at the meeting he replied that she “possibly did”.

Asked if ED wanted him to come back and meet with her and MB he replied that she did but it would have been too uncomfortable. He did not remember promising to telephone ED the following week. He did not like any type of confrontation.

Respondents Case

ED the General Manger said that she knew the claimant well. She was surprised that he was leaving, was not aware of any issues that he had with another member of staff and assumed he had another job. She asked to meet with him on Thursday 25th for a chat. The meeting didn’t happen but they did meet on the Friday where the claimant told her he would put his thoughts on paper.

It was a good meeting, but she was disappointed that the problems were only coming to light on the day he was leaving. It was agreed that he would contact her following a week’s holidays, she felt that would give him time to clear his head.

ED heard nothing from SB, she rang and left messages for him but still heard nothing. There was no reason for the claimant to resign his position, issues could have been dealt with internally and a solution found.

Under cross examination ED stated that she would have taken notes of the meeting. She spoke with MB following the meeting and telephoned the claimant on 3rd and 8th March. She could not confirm or deny writing to him after those dates but had no record of same. She denied every saying that the claimant might be taking things too seriously, there were grievance procedures in place and many people the claimant could have confided in. The investigation was never completed so it was not possible to say whether or not the allegations were true.

Determination

This case came before the Tribunal as one of Constructive Dismissal, therefore it fell to the claimant to make his case. The burden of proof, which is a very high one, lies with the claimant. He must show that his resignation was not voluntary.

The claimant never made a complaint to anybody in relation to MB's behaviour. The claimant did not evoke the grievance procedures as set out in the employee hand book and therefore gave the respondent no opportunity to investigate his allegations.

Accordingly, the Tribunal finds that the claimant was not entitled to consider himself constructively dismissed and the claim under the Unfair Dismissals Acts 1977-2007 and the Minimum Notice and Terms of Employment Acts, 1973 TO 2005 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

