

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE

CASE NO.  
UD2457/2010

Against

EMPLOYER

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms M. Levey B.L.

Members: Mr D. Winston  
Ms M. Maher

heard this claim at Dublin on 23rd April 2012 and 15th June 2012

Representation:

\_\_\_\_\_  
Claimant: Frank Ward & Co, Solicitors, Equity House, Upper Ormond  
Quay, Dublin 7

Respondent: Mr. Seán Brown, O'Connor Brown, Solicitors, 7 Dublin Road,  
Balbriggan, Co. Dublin

This being a claim of constructive dismissal it fell to the claimant to make his case.

#### **Claimant's case**

The claimant CR was head hunted from a large betting firm in 2004. He enjoyed his work and had a good working relationship with his employers. The business was owned by JR and his son PR. Initially he worked for them in Parliament Street and later moved to Skerries as branch manager. He had been told that the office was suffering a loss of turnover and there were problems with end of day balances. Everything worked well initially. One employee Ms H proved a difficulty for him. She was rude to some customers and used unsavoury language. CR was aware that she also worked for the employer JR at his public house. On 19<sup>th</sup> February 2010 an incident occurred in the betting shop between Ms H and Ms D. When Ms H was questioned about her balance from the Sunday a heated argument erupted. CR intervened because customers could hear what was happening and were leaving the shop. Ms H pushed him out of the way when he asked that they go into back office. CR rang PR his boss and asked if he could hear them, he also told him that people were leaving because of the argument. PR said "its great

isn't it, a bit like a wrestling match". The error was found quite quickly and CR was of the opinion that if things had been tallied correctly on the Sunday there would have been no issue. CR told Ms H that it was a fair question that she had been asked by Ms D at the time. She replied that she didn't fu...ng work for him or Ms D and he didn't back her up when he should have. Ms H continued making snide remarks throughout the day saying he hadn't backed her up. CR talked to PR at length afterwards. Ms H worked on Sundays and on Monday mornings the place would be filthy, bets not settled and work not done. When he spoke to her about it she told him she "wasn't the fu...ng cleaner". Her time keeping was also atrocious. On 1<sup>st</sup> April CR had an appointment and asked Ms H to come in at 5.30pm. She didn't show up and he rang head office to see if she had called in sick. They couldn't reach her either.

At 6.45pm CR received a call from her to say she would be there at 7.15pm, he told her not to bother as the last race was at 7.20pm. She was verbally abusive to him and said he had gotten her into trouble. The next time he saw her was the 23<sup>rd</sup> April. She said very little to him but lots to the customers, he heard her call him abusive names and tell customers he had gotten her into trouble. The next day CR walked in, he said "hello" she blanked him and slammed the door. He couldn't stick it anymore and left at 3pm. He rang PR and asked if one of them could be moved. PR did cut her hours but there was still an atmosphere, he always felt on edge.

The first Monday in May there was the usual Monday morning problems after her working the Sunday shift. CR spoke to PR who said he was looking for somewhere else for Ms H. The claimant didn't want to see her out of a job, he just didn't want to work with her. CR then went to his doctor, he wasn't eating or sleeping and didn't know what was happening to him. He had suffered from depression in the past and was on mild medication. His employer PR was aware of this from conversations they had while driving to race meetings.

CR felt he was not being taken seriously, he ran out of steam and handed in his notice. His wife persuaded him to look for redundancy and his employers obliged. PR asked if he would change his mind but he didn't want to admit to a girl bullying him. He thought that when he left that would be the end of things but he was still angered by it all, he did silly things afterwards like walking in the middle of the night and not sleeping for up to 36 hours.

CR ended up being referred to a mental health services unit and underwent one to one counselling and attended anti- anxiety classes.

Under cross examination CR said he didn't want Ms H sacked, she had children and needed the work. He shook hands and thanked his employer when he received his redundancy payment, he felt that Ms H was untouchable, she didn't recognise anyone as her supervisor, why, he didn't know but the previous manager had the same problems with her. CR was never offered a move to any other location, shifts were re-organised so they didn't co-inside with each other. He was a broken man, she had done it to him and it wasn't something he would go around bragging about.

DC a regular customer of the shop gave evidence that Ms H asked him if he had heard what the baldy bo...cks had done to her, referring to CR calling head office to ask about her on the night she failed to show up and allow him to go to his appointment. It was a regular joke in the shop because she was always late and known for her very poor language. He didn't go there anymore, didn't enjoy listening to the language and certainly would not employ Ms H as a manager.

AR wife of the respondent in her sworn evidence stated that her husband was an outgoing person who loved sport. He was excited with his new job, the location suited him and he was given a chance to build up the business. She noticed a change in him in March/April 2010. He

seemed apprehensive going to work but didn't open up to her. She knew he spoke with PR all the time and often joked that he spoke to PR more than he spoke to her. When he told her what was happening she was sure he had not been offered another location, he was the sole provider and she would have encouraged him to take any other position. CR's health issues were directly attributed to the situation at work, he often didn't eat and might spend days on the sofa. Regardless of the change of shifts CR still had to see Ms H for a changeover period of 15/20 minutes.

Dr N, G.P. in his evidence stated that CR is his patient. On 21<sup>st</sup> May 2010 CR presented himself in a stressed state, he didn't sit down but kept pacing and talking rapidly. He described the incident at work and his demeanour was angry. Dr N did not know the name of the person involved but knew it was a female. He prescribed medication for CR and seen him again on 2<sup>nd</sup> June and 2<sup>nd</sup> July. At the July session CR was still very distressed Dr N felt no progress was being made. CR remained unfit for work. This situation continued through 2010 and early 2011. Dr N stated that with the intervention of a consultant the claimant has shown significant improvement, he is stable but still anxious.

Dr M, consultant psychiatrist stated in his evidence that the claimant underwent extensive counselling beginning with his first attendance to his practice on 14<sup>th</sup> April 2010. Dr M had previously seen the claimant in 2006.

In his treatment the claimant described various conflicts at work, his version says that he was hit on one occasion. He was pre-occupied with the events and worried people were talking about him. He had feelings of uselessness. Dr M was of the opinion that the claimant was genuine and hoped that the claimant may begin to improve when the Tribunal proceedings were over and done with.

Under cross examination Dr M said that after an initial episode, as was the case in 2006, subsequent issues don't need to be much to trigger things off again. An employer may not notice anything as people can try to control it and put up a front.

### **Respondent's case**

Ms H in her evidence said that she worked for her employers for 16 years. She currently looks after the Skerries shop and also works in the respondent's pub. She got along well with the claimant, often texted him and had personal conversations with him.

She accepted that she sometimes had bad balances but was learning all the time. Ms H said she never had a problem until the incident on 19<sup>th</sup> February. The claimant made an allegation of assault, she never hit him, she did get up to leave and he held her back. Allegations about her time keeping were also untrue, the claimant never mentioned it while they worked together.

Ms H remembered the incident regarding his appointment, it was the start of night racing and she forgot about it, it was just a mistake on her part. She also stated that she didn't bang doors as there were no doors in the office that banged.

Under cross examination Ms H said she was aware that her change in hours were because of a row between them. It was nothing to do with the incident on the 19<sup>th</sup> February but because when she didn't show up to allow him go for his appointment a customer in the pub told her the claimant was telling people she was going to work Sundays on her own and take hours from people for extra pay. She texted him because she was annoyed, he rang her and told her what to do with herself and hung up. She agreed that the argument on 19<sup>th</sup> February could be heard by customers and it was inappropriate. She didn't call him names but did give out to him afterwards, she was not taking sole responsibility for bad balances.

Ms H currently looks after the shop and stated that her use of foul language is no more or no

less than that of the claimant.

PR gave evidence that he was operations manager for 20 betting shops. He developed a good relationship with the claimant. PR became aware of the incident of 19<sup>th</sup> February when the claimant phoned him and told him what had happened between the two girls. He said we will have to do something with her. PR never likened anything to a wrestling match, it's not something he would say and he runs a proper organisation.

PR never had any complaints about Ms H's work, the shop had a cleaner and they never had been any reason to discipline her. It was not like Ms H not to show up for work and after that episode PR told them both they were both good people, both been friends and to give things another week. They only worked five hours together the next week and on the Sunday Ms H rang to say there was an altercation because of what a customer had told her in the pub.

PR spoke to the claimant on the Monday morning, he complained of the area being untidy, the coffee machine not being filled etc. The claimant told PR he couldn't work with Ms H any longer, PR discussed it with his father and they gave the claimant 3 options (a) move Ms H (b) move the claimant to Donabate/ Swords (c) move the claimant to the race-room.

The claimant rang PR the next day and said he was leaving, PR said there was no need for that but the claimant said he had made up his mind. He later approached PR's father looking for a redundancy payment.

Under cross examination PR said that when incident with both girls arose he spoke with both of them and everything was resolved. It wasn't any one person's fault they were both to blame.

The first actual complaint was from MS H regarding the Sunday incident when she texted the claimant and he abused her over the phone. The claimant rang on the Monday morning to say the usual things, coffee machine not filled etc. PR told him that Ms H had said she was abused on the phone and the claimant mumbled something in reply. If the claimant said he complained a lot it wasn't to him, they spoke daily and anytime there was an issue it was sorted. There was nothing more the respondent could have done, they didn't want him to leave. Asked why he might have left PR said he was good at his job and assumed he had something else lined up or that as he had been doing the job for 20 years he might have wanted a break.

JR in his sworn evidence said that Ms H had worked for him for a long time. She was a good and valued employee. She had young children and always looked for hours. He found her to be prompt and accepted her explanation for the one day she was late. JR employed up to 150 people at one time and ran a good business. CR was also a good employee. The full duration of this fallout was less than one month. Initially they only worked 5 hours together, when that didn't resolve issues they took away the 5 hours from Ms H so they only passed in the doorway. JR felt it would blow over, they were both headstrong people. When the claimant rang him and said he couldn't work there anymore. JR had a chat with him. Options were on the table but it was hard to talk to him, he wouldn't let JR speak, just kept saying he was leaving. JR wouldn't accept his resignation but CR declined all the options. They both went home upset and JR rang him again. CR said he had worked for 20 years and wanted a break. This was when JR accepted his resignation. He told his accountant there was no reasoning with the man. The claimant telephoned later to see if he could be considered for redundancy. Resignation was withdrawn and the redundancy cheque was later collected by CR.

Under cross examination JR said he had the height of respect for both parties. Everything was dealt with as quickly as possible. He rang CR about 2 months after he left but got no reply. Options were given to the claimant including moving Ms H. but CR said he didn't want it to look like he had won. JR hadn't accepted his notice but had no choice in the end. He felt CR had a high opinion of himself and that he may have thought he could walk back into his old job at PP's.

**Determination:**

The Tribunal heard sworn evidence. There was conflicting testimony as to whether or not the claimant was offered a move to another of the respondent's outlets and as to whether or not the claimant was badly treated. The claimant was adamant in his testimony that he had frequently complained but that his grievances had not been addressed and that he had not been offered a move. The respondent disputed this.

Having carefully considered the evidence adduced, the Tribunal allows the claim under the Unfair Dismissals Acts, 1977 to 2007, and orders that the claimant be re-engaged in a similar role in another of the respondent's venues when his medical adviser certifies him fit to return.

Sealed with the Seal of the  
Employment Appeals Tribunal

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

