

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE
-claimant

CASE NO.
UD1232/2010

against
EMPLOYER
-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Browne
Mr F. Dorgan

heard this claim at Waterford on 9th December 2011
and 5th March 2012

Representation:

Claimant: M J O'Connor, Solicitors, Drinagh, Wexford

Respondent: Peter O'Connor & Son, Solicitors, Wyse House, Adelphi Quay, Waterford

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

Claimant's Case

The respondent is a travel agency. The claimant was a senior member of staff having worked there from May 2005. The respondent offices are small, with staff sitting at one long desk (counter) with some administration staff working upstairs. The claimant never received a contract of employment, terms & conditions of employment or grievance and disciplinary procedures.

In 2007 the atmosphere changed within the respondent. On the 1st of August the claimant saw an e-mail exchange between two of her colleagues' giving out about her. The claimant was very upset but did not complain about the incident.

In August 2008 the MD mentioned that there was a lot of jealousy directed at the claimant from the other staff. The claimant had returned from holidays and was asked how she got on; as she was passing behind her colleagues computers she again saw e-mails containing disparaging remarks about her. The claimant was very upset and the atmosphere was terrible.

The following week the claimant spoke to one of the perpetrators (S) about the incident but it only made the situation worse. S responded to the claimant by shouting at her 'prove it' and in relation to getting the MD involved, 'get the (MD) involved see who he'll believe I've been here longer.' Two days later the claimant informed the MD of the two incidents. He was dismissive and said it's only a small problem. In the meantime S went to the manager (IM) and said she was so upset over the exchange with the claimant that she is unwilling to come back to work. The MD then went to S's house to speak to her. The relationship had completely broken down with S at this stage.

In February 2009 the claimant asked S to swap a Saturday shift with her as the claimant was having surgery on the 14th of March. The staff worked Saturdays in rotation. The standard practice was that the rota was on a board in the office. As was normal the claimant asked the manager (IM) to put a sticker beside her and S's name to indicate they were swapping shifts and he again approved the swap. On the 10th of March S said the swap had never been agreed with her. IM offered to swap with the claimant instead of S as S had plans. The claimant then received an offensive text message about her in error from a colleague (J) regarding the shift swapping. This further upset the claimant so she raised the issue directly with the MD on the 11th of March. The MD agreed the text was unacceptable, the claimant asked him to investigate and find a resolution to the situation. The MD did not revert to the claimant. The following evening J called the claimant to her office and told the claimant she had been instructed to apologise for the text message. J attacked the claimant for bringing the issue to the MD's attention. The atmosphere was very tense in the office, none of the staff spoke to the claimant after that point and the claimant was totally isolated.

On the 20th of March 2009 the claimant sent an official letter of complaint regarding the situation to the MD. The letter included the statement,

'in the absence of any formal workplace policy on bullying, my understanding is that in many cases these issues can be addressed informally...unfortunately I do not feel this is possible for 2 reasons;

- *the fact the person in question is the wife of my direct line manager*
- *the threatening nature of the text I received.'*

The claimant again requested that the situation be investigated as, *'I cannot accept this bullying behaviour any longer.'* The MD did not respond to this letter. The situation got worse in the office.

On the 11th of April the claimant again asked the MD for help and asked him to sort the situation out. On the 8th and 9th of April the claimant saw e-mails from S containing very defamatory remarks and serious ill feelings towards the claimant. The MD said he would not be replying to the claimant in writing as, 'he had not done so in 40 years.'

The claimant wrote to the respondent again on the 28th of April 2009. This letter referenced and contained the relevant responsibilities of an employer under the Health and Safety legislation and in particular the Code of Practice detailing procedures for addressing bullying in the workplace. The MD did not respond to this in any way. None of the staff in the office spoke to the claimant including her manager. It was the worst experience of her life and affected her very badly. On the 19th of May the claimant attended her G.P. and was declared unfit for work.

The claimant's salary was paid while she was on sick leave until August 2009. It was normal for the respondent to pay sick pay. On the 19th of November 2009 the claimant wrote to the respondent saying she had not received her salary for September or October

2009. The respondent replied by letter dated the 30th of November but not received for 3-4 days stating that business was slow but enclosing a bank draft for outstanding pay. By letter of the 30th of November the claimant resigned referring to the, *'ongoing systematic bullying, intimidation and harassment to which I have been subjected to by the company, its management and staff.'*

The claimant had engaged legal representation and been advised before her resignation. The claimant got married and went on honeymoon during the period that she was absent from work on certified stress-related sick leave.

Determination

Having considered the evidence adduced by the claimant in her direct evidence and during cross-examination at the hearing the Tribunal finds that there was no conduct on the part of the respondent such as would entitle the claimant to consider herself constructively dismissed. Thus the Tribunal finds that the claimant did not satisfy the burden she bore in relation to her claim for constructive unfair dismissal.

The Tribunal finds that there was no bullying or harassment of the claimant within the meaning of law in that the claimant only put forward two incidents of alleged bullying and harassment rather than a pattern of systematic and persistent behaviour. The first incident was a text message and the second incident was a tranch of e-mails all of which were dated 8th April 2010, none of which were addressed to the claimant and in respect of which the claimant was never intended to have sight of. The Tribunal finds that the respondent was not made aware of any allegation of bullying or harassment until the 20th March 2009 and again on 28th April 2009.

The Tribunal finds that the respondent did deal with the first incident albeit that the claimant may not have been satisfied with the manner in which it was dealt and as regards the second incident the claimant went on sick leave within a few days of the respondent being notified of this incident and thus the respondent did not have sufficient time to deal with this complaint. The Tribunal finds it would have been totally inappropriate for the respondent to engage the claimant in any procedure regarding the second complaint whilst she was absent from work on sick leave.

Accordingly, the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

