

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD710/2010

against
EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. S. Mahon
Members: Mr. P. Pierson
Mr. O. Nulty

heard this claim at Longford on 20th September 2011 and 23rd April 2012

Representation:

Claimant:

Bríd Mimmagh & Associates, Solicitors, Church Street, Longford

Respondent:

Mr. Michael O'Sullivan, HR Advisor, ARRA HRD Limited,
Castlelost West, Rochfortbridge, Co Westmeath

Claimant's case

The claimant's case was that she was constructively dismissed from her employment with the respondent. Therefore it was up to the claimant to present her case first.

The claimant commenced employment with the respondent on 8th August 2006 and terminated her employment by letter dated 9th October 2009. For the first nine months there was a good working atmosphere. However after that time things began to deteriorate. There was a change in the attitude of the respondent and his wife towards the claimant. The respondent became aggressive towards the claimant to the point where she felt threatened by him. Examples of such behaviour were incidents whereby the respondent kicked the claimant's desk and punched a door.

The respondent's wife (CB) was a life-long friend of the claimant and it was she who had asked the claimant to work for the respondent. However, when the claimant tried to talk to CB about how the respondent's behaviour was scaring her CB just laughed at her.

The respondent employed a General Repair Man (ROH) and there was a dispute between them on foot of a Quote given by ROH to a customer in respect of a heating conversion. ROH requested a meeting with the respondent and this took place on 10th September 2009. Present at this meeting were the respondent, his wife and ROH. The claimant was present in the office and the respondent ordered her into the meeting and locked the door behind them. During this meeting the respondent accused the claimant and ROH of cutting off the company's cash flow by excluding it from this heating conversion. CB said to the claimant and ROH "the door is there for the two of ye" and then walked out of the office. ROH subsequently asked for his P45.

The claimant remained at work for the rest of that day and gathered some of her personal possessions and went out sick from the following day. She did not return to work and resigned by letter dated 9th October 2009. While the claimant was out sick from work CB called to her house looking for information to be downloaded from the claimant's lap-top. The claimant downloaded this information for CB but they did not discuss the employment situation of the claimant.

Having resigned from her position, the claimant was concerned that people phoning the respondent's office were being told that she was still working there. Her sister-in-law rang the office and was told that the claimant was out at the moment and she then rang herself and was told the same thing. This compelled the claimant to write to some of the customers of the respondent to inform them that she was no longer working there. It was put to her, by the respondent's representative, that this letter was not just informing those customers of her resignation but was in fact touting for business. The claimant denied that she was touting for business and stated that she has not, nor did she intend to start up in a similar business to the respondent.

The claimant had never received written terms and conditions of employment and was not aware of any formal grievance procedure. In her letter of resignation the claimant outlined her reasons for resigning stating that she could no longer work in the conditions she was being forced to work in. The claimant also stated, in this letter, that she was not required to give any formal notice as no written contract of employment was in place.

Respondent's case

The respondent denied ever kicking the claimant's desk or punching the door. He stated that he could be vocal about situations at times but this was never directed towards employees. He said that he never noticed any deterioration in the relationship between himself or his wife and the claimant and was shocked and upset at the claimant's letter of resignation. The respondent was also disappointed at the claimant's letter to customers and he saw this as an attempt to tout business at his expense.

There had been a meeting on 10th September 2009. This meeting was at the request of ROH and the claimant was not invited. However she was in the office at the time and kept interrupting the meeting. CB was present at this meeting and asked the claimant to leave the meeting saying "there is the door, please leave". This meeting took place before the office opening time of 10:30 and that was why the front door was closed.

The respondent was not aware of any grievance the claimant had until her letter of resignation and therefore had no opportunity to address such a grievance.

Determination

This was a claim for constructive dismissal and as such it is incumbent on the claimant to prove that she had no alternative but to resign. Having considered the evidence adduced at the hearing the Tribunal is not satisfied that the claimant attempted to raise a grievance with the respondent prior to her resignation and therefore did not allow the respondent to address such a grievance. Therefore the Tribunal finds that the claimant was not dismissed, constructively or otherwise and her claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)