

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE
- *Claimant*

CASE NO.

UD2311/2010
MN2256/2010

Against

EMPLOYER
- *Respondent*

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. P. O'Leary B. L.
Members: Mr. D. Winston
Ms. E. Brezina

heard this claim at Dublin on 10 April 2012 and 7 June 2012

Representation:

Claimant:

Hughes & Liddy, Solicitors, 2 Upper Fitzwilliam Street,
Dublin 2

Respondent:

Mr. Gary O'Mahony, IBEC, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

IK gave evidence of being the line manager at the store where the claimant worked at the time. Two employees approached him expressing their unhappiness working with the claimant on the night shift. One employee (KN) the night manager said that the claimant would not take instruction from her and the second employee (LM) agreed it was difficult working with the claimant. He referred the complaints to his manager.

RG the store manager at the time was informed of the complaints from the two employees. She told the Tribunal that she spoke with both employees and they were afraid of the claimant. KN and LM told her of threatening remarks made by the claimant. She was told how the claimant offered between €8,000 and €15,000 to each of them for a paper marriage as his visa was running out. KN was concerned that the claimant would not take instruction from her because she had refused to marry him. She had an informal meeting with the claimant following speaking with the two employees. She put the issues to him and was of the view that he had an issue with taking instruction from KN as he had more service than her and she was now a trainee manager. She was told of comments the claimant made about her from time to time but as she had no proof of the accuracy she did not discuss the alleged comments

with him. She heard how the claimant said that if she spoke to him in a certain manner that he would slap her.

RG said she had supervised the claimant for almost two years and agreed there were no previous issues. She considered his performance and conduct prior to this as good. The witness denied that at the informal meeting she had with the claimant on the 10 April 2010 that she discussed deep rooted personal issues. In reference to a Facebook link titled “females are horrible managers” which included her picture she stated she was not aware of its existence until after the meeting in and around the 12 April. The Facebook link was brought to her attention by her brother also an employee. She agreed that she could not prove who set up the page or who was the author of the comments.

The witness told the Tribunal that she did not report the threats to staff and the offers of money for marriage to secure a visa to the Gardaí as the respondent had an internal policy and procedure to deal with the matter. She investigated the complaints made by staff, she believed they were frightened and distressed and passed on her notes to another manager and she did not conduct or attend the disciplinary meeting.

KN in her evidence told the Tribunal she commenced employment in October 2007 at the store and in October 2009 commenced night shift duty. The claimant offered her €8,000 if she would marry him and on a second occasion offered her between €10,000 and €15,000 saying he needed a visa. Following her refusal on both occasions he became rude and ignored her requests to carry out certain tasks. He had no respect for her and she was scared working on the night shift with the claimant.

She said the marriage for money offer was put to her on three or more occasions. She didn't complain at the time and continued refusing the offers. The witness stated that she only became fearful when her colleague (LM) told her that the claimant had said he wanted to cut her head off. She was unable to confirm the dates of the incidents and could not recall exactly what brought the issues to a head on the day she complained to her manager. She admitted that she had thought she could handle the problem herself without reporting each incident to her manager but in the end had to complain.

LM told the Tribunal that the claimant had said to her he would like to cut KN's head off and put it on the roof of the store. On another earlier occasion a jar of beetroot was broken on the floor and he commented that it was KN's blood on the floor. She told of her fear and was scared of the claimant's behaviour. The claimant offered her money for marriage and said he needed a visa but she refused and told him she had a boyfriend. She was offered up to €4,000 for a paper marriage.

MH gave evidence of knowing the claimant and working with him. He had completed a course in event management which involved the study of social media platforms including Facebook and Twitter. He was friends with the claimant on Facebook and received an invite from him to join a link titled “females are horrible managers”. He did not join and referred the details to RG's sister. He did not know who set up the page referred to in his evidence.

ED for the respondent company outlined how he was selected from a group personnel panel to investigate the allegations made against the claimant and later conducted a disciplinary meeting. As part of the investigation process he met with witnesses including IK, NA, KN and LM and took statements. The issues addressed included

- the claimant refusing to take instruction,
- paper marriage proposals
- threatening and abusive behaviour towards colleagues
- Facebook image and statement

Following the investigation ED arranged a disciplinary meeting and the claimant was accompanied by his union representative KP. Statements were read to the claimant and a twenty minute break followed. The claimant in response stated that the allegation of paper marriages was a crime against the state and he would never do that. He said Facebook was his personal life and no other person had access to this facebook account. He denied that he threatened to cut the head off his colleague and he made no comment in relation to threatening to slap RG. The meeting concluded and the claimant was asked to refrain from contacting the witnesses and told he would remain on paid suspension until a decision is reached. The finding was gross misconduct and the decision was based on the threatening and abusive behaviour towards colleagues. A letter issued to the employee advising him of his dismissal and his right to an appeal. ED told the Tribunal that he stood over his decision completely. He acknowledged that the allegations were not put in writing to the claimant in advance of the meeting and denied that he bombarded the claimant at the meeting.

AMM a former employee relations manager with the respondent company gave evidence of conducting the appeal. The appeal meeting was held on the 1 July and the claimant was unaccompanied. At the meeting the claimant told how he was a senior member of staff with no previous warnings. Having considered the facts and given the claimant a right of response she found that his behaviour was gross misconduct.

The claimant (YA) commenced employment in April 2007. He had a good working relationship with his co-workers. He told how on the 8 April 2010 when a jar of beetroot broke on the floor he joked it looked like blood. The comments were made in a light hearted manner and having cleaned up returned to normal duties. He made no comment about any colleague at that time. He had a facebook account which he never used much and never had any knowledge of the “females are horrible managers” page until RG showed it to him at a meeting. He explained to the Tribunal that at the time to the present he studies accounting and finance and holds a student visa and never offered money to colleagues for marriage. He has no difficulty working for or with women and his only issue was he had never been offered any of the trainee options offered to other colleagues. Although he had often been asked to train new staff he was given no opportunity to progress further in the company. He told how one colleague (L) shouted instructions at him regularly. He was requested to attend a meeting which he understood at the time was in relation to the issue of junior/senior but was surprised and shocked to learn of the allegations being made about paper marriages and threatening colleagues. He explained that he had completed a 10pm to 6am shift when called to meet RG and told how she was extremely angry. Following that meeting he was scared and expected the Gardaí to take him away. At his disciplinary meeting with ED he told he was given no advance details of the allegations and felt poorly represented by his union. Following dismissal he attended an appeal hearing where he believed AMM was not prepared and he was given no

opportunity to cross examine those who had made the allegations. He was concerned that in one statement reference was made to him being an extremist which he interpreted as a terrorist. The claimant denied sending the “females are horrible managers” link to MH. He denied threatening to slap RG and he denied offering money for marriage to any of his colleagues.

The claimant’s brother a former employee of the respondent outlined to the Tribunal that he met with RG as he was concerned about what was happening with his brother. RG told him she would fire the claimant and call the Gardaí to deport him as he was ruining her career. She asked him to get his brother to admit to the allegations.

Determination

The Tribunal considered the evidence given in this case and the procedures used. The main complaints made against the claimant were;

- That he did not follow instructions
- That he made illicit offers of proposals of marriage to female staff
- That he made threats to staff
- That he exhibited a picture of and made derisory comments about a manager on Facebook

It was noted by the Tribunal that the claimant was summoned to an informal meeting by the said manager despite her being aware of the allegation made against the claimant in respect of Facebook. While this may not have been seen by the employer as part of the disciplinary procedure the Tribunal determine that it was part of the disciplinary procedure used. The Tribunal determines that the claimant should have been provided with a copy of the allegations made against him at this meeting. The complaints made by the two female staff about the claimant were such that when made were so prejudicial that their probative value was diminished. The Tribunal prefers the evidence of the claimant on these issues. A language interpretation problem may have been a factor in these matters. There was no clear evidence that the staff member that gave the claimant instructions was in fact senior to the claimant however the Tribunal accepts that the claimant was wrong in not following those instructions. No evidence whatsoever was produced to the Tribunal that the claimant was the author or instigator of the Facebook picture or comments. The Tribunal determines that the claimant was unfairly dismissed. However he did contribute to that dismissal by not following the directions given him.

The Tribunal award the claimant the sum of €7,500.00 under the Unfair Dismissals Acts, 1977 to 2007. The Tribunal further award the claimant €467.52 in lieu of two weeks minimum notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)