

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE – *claimant*

UD1295/2009

against

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. McGovern

Members: Mr. A. O'Mara
Ms. M. Finnerty

heard this claim at Navan on 28th September 2010 and 4th April 2012

Representation:

Claimant: Mr. Owen O'Sullivan B.L instructed by
Meaghers Solicitors, 8 Exchange Place, IFSC, Dublin 1

Respondent: Mr. Pauraic Lyons BL instructed by
Donal T. McAuliffe & Company Solicitors, 57 Merrion Square, Dublin 2

Claimant's Case

This is a claim of constructive dismissal therefore the claimant gave evidence first. She commenced employment with the respondent in July 07. She did not have a contract of employment. She has extensive HR experience and her job was to create HR policy and guidelines these were required because the business had grown significantly in the previous 5 years. The business is a family run enterprise. The managing director and the second director are brothers. Their sister is the operations manager.

No issues arose before she went on maternity leave in March 08. Before her maternity leave the claimant recruited the HR assistant on a fixed term contract to cover her role during her leave.

In October 08 the claimant met with the operations manager and told her that she hoped to return to work on 1st December and to ask for reduced working hours. She had to put her request to the

managing director. The managing director told her that her job was gone because she had been gone too long.

The claimant returned to work on 1 December. December was a frantically busy month. In January she noticed a change in tone and attitude towards her by the managing director. When one of the quality control assistants left the managing director phoned her and shouted down the phone at her asking did she hire her. Another day she forgot to send the managing director an email, he was aggressive and shouted at her. Later he said it is ok.

On another occasion the managing director asked her to hire someone Polish who could handle horses. He did not give her clear directions. He spoke to her as if he was pouncing on her and his tone was very aggressive.

The operations manager asked the claimant to hire a quality control assistant but not to tell the managing director. There was a general fear of the managing director. The claimant was not the only employee afraid of the managing director. She did not take any steps to resolve the matter nor did she talk to anyone at work about her difficulties. She hoped things would pan out and improve.

The claimant was working on hiring a quality control person and getting tense because of it. On the morning of 2 February the managing director came into the claimant's office in an agitated state. He demanded that he be informed if she recruited anyone whatever the position. Then he demanded to see the person she had interviewed for the quality control position. This was not usual at that level of position. The managing director left the claimant's office and phoned her to come to his office. The claimant felt that her position was undermined because the managing director discussed the recruitment of the quality control assistant with the HR assistant before talking to her. The managing director was reading the CV of the candidate for the position of quality control assistant. The managing director was disparaging about the candidate's name, his qualifications and his referees. The claimant just sat there and put up with it.

Then the operations manager came into the office. The managing director complained to the operations manager about the fee to be paid to the agency that had sourced the candidate, he was annoyed too about the proposed salary. He wanted both figures renegotiated. The operations manager left the office. The claimant followed. As the claimant walked down the corridor the managing director was shouting after her. Back in her office the claimant was trying to compose herself. The managing director phoned her demanding that she contact the agency to renegotiate. The claimant could not compose herself and she was hyperventilating. She phoned her husband then put on her coat and went home. Her husband phoned the operations manager and informed her about the incident.

The claimant went to her doctor and was given a cert. The following day the operations manager sent the claimant a text message proposing a meeting. They met at a neutral venue. The claimant told the operations manager that she was frightened of the managing director and upset by his foul language. The operations manager told the claimant that was just the managing director's way and that he would not apologise. When the operations manager suggested that she call the managing director to discuss the issue, the claimant was breaking out in a sweat at the thought of seeing him.

The claimant had put in place the respondent's grievance procedure. The respondent employs around 300 people so the grievance procedure has been used. She felt that she could not. The second director has separate responsibilities from the managing director. The operations manager was approachable but she is afraid of the managing director.

The HR assistant contacted the claimant to find out what she wanted. The claimant felt that she could not work there again. She was angry about the way she was treated. No resolution was possible. She felt that there was no concern with her grievance. The HR assistant contacted the managing director with a proposal to give her three months pay. However the managing director phoned her and said that she would get nothing. Her job was there for her. This was the way he had managed for 30 years. He had no remorse or compassion for her.

The HR assistant sent the claimant a letter on 19 March requesting that she attend the company doctor. She attended the doctor. When she read the doctor's report the claimant realised she had a grievance rather than a medical problem.

On 30 April the claimant was again requested to attend for another medical assessment. The claimant felt that this was an insulting response to her grievance. In her view it more aggression and more intimidation. She already attended a company doctor. She could not face the managing director. The claimant felt she had no choice but to resign.

The claimant's husband gave evidence. She phoned him on the morning of 2 February 09. She was inconsolable because of the issue with the managing director. He told her to leave and come home. He phoned the operations manager to let her know about the altercation between the claimant and the managing director. Later he again phoned the operations manager and she told him that the managing director thought highly of the claimant. The incident did not come out of the blue; the claimant had been upset for 2 or three weeks before. However she did not tell anyone in the company.

Respondent's Case

The joint managing director of the respondent (SD) gave evidence. The claimant was employed to set up the HR department as the company had expanded to the point that a dedicated department was required. The respondent's grievance procedure was put in place by the claimant. The claimant went on maternity leave in March 2008. SD had a very good relationship with the claimant up until that point. A temporary worker was employed to replace the claimant until her return. The claimant came into the office with her new baby and by way of a compliment to her recruitment skills the respondent said regarding the temporary worker, 'you've big boots to fill.'

On the claimant's return to work she requested part-time hours. The nature of the company means it's a 24/7 job so the claimant's request was turned down. SD asked the claimant to assist in the recruitment of an employee for a friend. He asked the pack house manager to assist her as he 'knew a lot about horses.' A few days later SD asked the claimant how the shortlist was progressing; this was not done in an aggressive manner.

The Quality Control person left the respondent's employment so SD asked the claimant for the reason. This was not intended to be undermining SD just wanted to know why he had left as they have such a low turn over of staff. SD was not happy with the recruitment of the replacement as the terms & conditions and salary had been agreed without consultation with him; due to the recession all prospective salaries were being reviewed. SD asked to see the C.V. of the replacement QC and asked if the recruitment was through an agency. SD queried why the internet wasn't used more for recruitment instead of paying the high recruitment agency fees. This was not an aggressive conversation. As far as SD was concerned he would be meeting with the claimant later to interview the prospective QC. SD was very surprised that the claimant left the

office and then they started receiving sick notes. The respondent had no warning as to the claimant's feelings prior to the sick certs stating 'work related stress'.

The claimant was asked to attend the company doctor by letter dated the 19th of March 2009. The respondent wanted the claimant to return to work. The medical report did not give a prospective return to work date. Another doctor's appointment was made for the 30th of April 2009. The respondent had no idea why the claimant left her employment or when she might be coming back. The claimant responded stating that she was concerned at the suggestion her role would no longer be available and that 'I hope to return to work when I am certified fit to return.' The respondent replied stating that there was no suggestion that her role would not be available for her. The second appointment was arranged with a psychological specialist to assess the claimant as the original doctor only listed her symptoms without offering a diagnosis or possible return to work date.

The claimant resigned by letter of the 21st of May 2009; SD did not realise that by asking the claimant to attend a doctor she would feel 'intimidated.' By fax of the 27th of May the claimant was asked to reconsider her resignation; she could have returned and everything would have been normal. The claimant's performance and capability was never questioned the respondent wanted her to return.

The respondent took steps to find out what was wrong with the claimant. The grievance procedure is in place to resolve situations.

The operations manager with the respondent for thirty years (FL) gave evidence. The claimant requested part-time hours on her return to work post maternity leave. FL knew this was not feasible but said she would check with SD. FL was not aware that the claimant was suffering from any illness. If the claimant had informed her or SD that she was suffering from a psychological illness the request would have been considered differently. FL walked in during the conversation SD and the claimant were having regarding agency fees; all FL said was that they had paid much more in the past; it was not an aggressive conversation. Following that conversation the claimant's partner rang to say she was upset; FL informed SD of this, he was surprised as he didn't think anything had happened.

FL asked the claimant to meet her for lunch. FL requested that she return to work and would have said that SD has no issue with her whatsoever. FL just thought the claimant needed a bit of time off. There were other 'non-family' members of management the claimant could have taken a grievance to if she did not want to contact SD or JD. When FL saw 'work related stress' on the medical certs she did not contact the claimant again as she didn't want to 'hassle' her.

Determination

Having carefully considered the evidence adduced the Tribunal find that the claimant had an obligation to invoke the grievance procedure. The claimant was the HR Manager and had put those procedures in place. The Tribunal find that the claimant did not meet the burden of proof required for a claim of constructive dismissal and that the respondent did not engage in behaviour that would entitle the claimant to consider herself constructively dismissed. Accordingly the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)