

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE
-claimant

CASE NO.
UD2448/2010

against
EMPLOYER
-respondent

under
UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. M. O'Connell B.L.

Members: Mr. T. O'Grady
Mr. P. Woods

heard this claim at Dublin on 4th May 2012
and 30th July 2012
and 31st July 2012

Representation:

Claimant: Mr Graham Macken, Siptu, Wholesale, Retail &
Distribution Sector, Liberty Hall, Dublin 1

Respondent: Mr. Conor Power BL instructed by Ms Marian Becker,
Denis McSweeney, Solicitors, First Floor, Grand Canal House,
1 Upper Grand Canal Street, Dublin 4

Background:

The claimant is an employment law consultant at the respondent company. The respondent Company advises their clients on employment matters. The company contends that they dismissed the claimant for misconduct.

Respondent's case:

The Tribunal heard evidence from the claimant's line manager (JB). She joined the respondent in 2007 and was promoted and became the claimant's line manager in December 2008. She explained that the respondent advises clients on employment matters such as statutory annual leave, sick pay, disciplinary matters, redundancy, misconduct and dismissal matters.

The witness explained that new employees with the respondent and given an induction course. New employees that are advisors listen to phone queries. They have access to articles of research and everyone fills in an assessment form. If a query arose regarding a client's query they could access information. They had copies of decisions of the various employment bodies and databases.

The witness explained that the claimant was difficult to deal with/ with colleagues, at the best of times. The claimant did not like to be issued with instructions. The claimant did not agree with her advice. She dealt with the claimant in several ways, informally and by way of disciplinary matters. One example was because of the claimant's way dealing with a client she had to issue her with a written warning. The claimant told them that she would still deal with the client/client query the same way. They had to offer the client recompense because of the client's dissatisfaction.

The witness gave another example whereby a client was not satisfied and they called the claimant to a meeting.

The witness gave evidence that a HR manager flew over from the UK to partake in a disciplinary process regarding the claimant. The claimant partook in the process and was represented at the meeting. The claimant received a written warning. She appealed the warning and was unsuccessful. The written warning was kept on her record for six months.

The witness gave evidence as to other informal warnings that were given to the claimant.

The claimant was invited to a disciplinary hearing by letter 01st July 2009. This was in relation to the claimant's performance issues, such as failure to follow instructions and response times.

The witness explained the disciplinary procedures in the respondent company and the application of same regarding the claimant.

Regarding another disciplinary matter the respondent decided that rather than issue the claimant with a final written warning they would instead extend a written warning that had been issued to the claimant. They did this because they wanted "...good relationship and we wanted to show that the process is not punitive".

The witness gave detailed evidence as to investigations and disciplinary processes.

The claimant was eventually issued with a final written warning by letter dated 23rd February 2010. This warning was to last for twelve months. This was appealed to BB and the witness was not involved in the appeal. The final written warning was appealed.

The Tribunal asked the witness for a summation of the warnings given to the claimant. The witness explained that there had been four letters of concern in total, one warning, one extended written warning and a final written warning. The claimant had been issued with two further letters of concern following the final written warning. The claimant never provided an excuse or reasons for her behaviour there were no clear mitigating reasons, the claimant did not show remorse.

Cross-examination:

The witness was asked about the code of practice, i.e. that the claimant be able to question the witness statements. She explained that they had a statement from their client and they did not think that it would be fair on their client to get them involved. Also the complaint was about their employee and they listened to the phone call taped and they felt that the complaint was substantiated.

Regarding training they did provide some phone call handling training as part of the claimant's personal development; they did provide training. The claimant herself felt that she did not require further training.

Regarding the investigation meeting the claimant was uncooperative and this is what could have impacted on the length of the meetings. She did not feel that the advice given to the claimant that she "not comment" was the correct advice.

The Tribunal heard evidence from a witness who was head of operations during 2008 / 2009. He was the person who hired the claimant. They had been looking for someone with ten years experience. He passed the claimant's probationary period, however he did highlight his concerns to slow down and listen to the clients.

At one time both JB and the claimant applied for a position (promotion). He gave the position to JB. When he was giving the claimant feedback she voiced misgivings which he investigated.

Regarding feedback the claimant took every element of feedback in a negative way.

Regarding the claimant working hours he raised this with the claimant and he offered her training. The claimant told him that she did not need training.

In answer to other questions regarding the claimant's deterioration in work the witness replied, "Only the claimant can say why she changed, she did not get the job of team leader and from that moment on she did not want to be managed by JB, we did not want to lose staff. She disagreed with JB's advice, she disagreed with my advice; it cost the company money".

Regarding dealing with a complaint the witness replied that "we believe our instructions were fair and reasonable, I believed it was dealt with. No further grievances were raised she could have gone over my head". The witness knew what the claimant's skill levels were and "did not want to lose her".

Regarding logging calls the claimant was staying late as she did not log the calls until later on in the day. Fifty per cent of queries are e-mail and fifty per cent are telephone queries and the claimant preferred to give advice over the telephone. The claimant logged calls at the end of the day and he wrote to her to explain that she needed to log the calls during the day. He sat with her to show her how to log the calls.

The Tribunal heard evidence from BB regarding the appeals process.

Claimant's case:

The Tribunal heard evidence from the claimant. She made a number of points to the Tribunal regarding her case. She told the Tribunal that it was hard for her to interact with JB and general day-to-day interaction did not happen. JB did say to her that she did not know that she felt that way and she told JB that they would move forward.

At one time JB went on annual leave. When JB returned she was promoted to a role of senior

advisor and the position had not been advertised.

Regarding the first disciplinary meeting, she had attended two investigatory meetings prior to this. She was required to attend these meetings directly from her work station. She tried to swap lunch breaks to afford her some time but was not allowed to.

Regarding the respondent's contention that she did not deal with clients satisfactorily and that she did not improve she explained to the Tribunal that she was not given proper training

Regarding the complaints against her she had asked for written complaints and she did not receive these. She did not believe the complaints existed. The respondent company itself advises clients to get statements from complainants and to give the statements to the employee concerned also to allow the employee to ask questions of the complainants. The claimant believed that the complaint in question was the only one that the respondent could get in writing.

Regarding the recording of calls it was her position that recording of calls was for training purposes only and not for use in disciplinary matters.

The claimant explained that she was told her advice to clients was not commercially focused and that her advice was too stringent. She had not received specialised training or any one-to-one training. She had not received any specific training at all. The claimant expanded on that point in that she was dismissed two weeks after BB had upheld her Final written warning and she had not received training within the two week period. She was never given re-training or an action plan.

The claimant was asked if there was an appropriate support mechanism in the work place and her position was that there was not and that she "dreaded" going to work every day. She also gave evidence that she worked ten or fifteen hours extra each week.

The claimant's position was that the person that she had a grievance with was also her line manager.

The Tribunal heard evidence as to the claimant's loss.

Cross-examination:

It was put to the claimant that she never made a formal complaint against JB and she agreed that was so. In answer to further questions that claimant contended that she felt that if she made a formal complaint she would lose her job. She was asked why she did not ask her employer for training and she replied that it was up to the employer to organise training.

It was put to the claimant that she listened to her advice calls recording with her employer and that she had agreed with her employer that her performance was sub-standard; however no one offered her corrective training.

The Tribunal heard closing points from representatives from both parties.

Determination:

Having carefully considered all of the copious oral and written evidence in this case the

Tribunal finds that the dismissal of the claimant was not unfair.

The Tribunal have some misgivings about the procedures used, particularly the appeal process, however these misgivings are minor and do not affect the fairness of the decision to dismiss the claimant.

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

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

