

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *claimant*

UD2385/2010

against

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr. W. O'Carroll
Mr N. Dowling

heard this claim at Tullamore on 29th August 2012

Representation:

Claimant(s) : Mr. Donal Farrelly, Donal Farrelly & Co, Solicitors,
Tullagh House, High Street, Tullamore, Co Offaly

Respondent(s) : Mr Terry Cummins, IBEC, Confederation House, 84-86 Lower
Baggot Street, Dublin 2

Claimant's Case

The claimant gave evidence that he worked for the respondent company for 5 years. He progressed through the company and at the time of his termination of employment was employed as a warehouse manager. He was appointed to that position by (MM) and gave evidence that (MM) subsequently left the company following allegations of making inflated insurance claims on behalf of the company. Following (MM's) departure in 2009 a restructuring process took place within the company and he (the witness) now reported to (CB), logistics manager who in turn reported to (JC), managing director.

The witness gave evidence that he was subjected to bullying and harassment by (CB) and (JC). He outlined to the Tribunal instances of this bullying and harassment. His loyalty to the

company was questioned. He was told that he had to make himself available to the company 24 hours per day 7 days per week. He believed that the reason he was subjected to the bullying and harassment was because of his association with (MM). The bullying and harassment caused him to report absent from work on stress related illness and he provided the company with medical certificates to that effect. This stress related illness led to a breakdown in his relationship with his girlfriend and young child. He returned to live with his mother. His health deteriorated and he was told by his doctor that his work issues were having a detrimental effect on his health. He was made feel unwanted and felt afraid. He did not want to leave the company as he always saw himself as progressing through the company. However, eventually due to the bullying and harassment to which he was subjected he believed that he had no option but to tender his resignation and he did so on 21 May 2010.

He told the Tribunal that he would have happily remained working with the company if he had been treated with respect but that did not happen because of his association with (MM). He gave evidence that he was never given a copy of the company handbook or grievance procedures. He was just asked to sign the back page of the handbook. He believed that speaking to the Human Resources section of the company was the same as speaking to (CB) and (JC).

Respondent's Case

The company's corporate Human Resources Manager, (EB) gave evidence to the Tribunal of efforts that were made to contact the claimant while he was absent from work on sick leave. The company wanted to meet and speak with the claimant concerning issues that he had raised as these issues had caused concern to the company. She gave evidence that voice mail messages and letters were not responded to by the claimant. She gave evidence that she personally had not given a copy of the employee handbook and grievance procedures to the claimant, but believed that the claimant was aware of the grievance procedures. As a warehouse manager with responsibility for 17 employees the claimant had attended training courses on how to deal with grievance procedures. She told the Tribunal that the company made every effort to contact the claimant to discuss the issues he had raised.

On 13 May 2010 she received a telephone call from the claimant informing her of his decision to resign. She gave evidence that the tone of the phone conversation was friendly. She asked him to re-consider his decision but he said that he did not wish to do so and he was considering returning to college. She asked him to confirm his resignation in writing and he subsequently did so. She confirmed that during the phone call of 13 May 2010 the claimant made a passing reference to (MM) but did not state that he felt victimized because of his association with (MM). She informed him that she could not discuss issues in relation to other employees. She confirmed that the claimant was certified as being unfit for work during the company's attempts to contact him.

(JC) gave evidence that he joined the company as general manager in 2010. He is currently Managing Director. He attended a meeting with the claimant in March 2010 following the claimant's return to work from a sick leave absence. He gave evidence that it was an informal meeting and he raised some concerns with the claimant about the level of overtime in the warehouse. Overtime levels were an issue and needed to be tackled and these levels have now been brought under control. There was no mention of any bullying at that meeting. His objective was to see that the claimant did his job as warehouse manager and that was the only meeting that he had with the claimant. He gave evidence of a container being left unlocked and

it was the claimant's responsibility as warehouse manager to ensure that it was locked.

He gave evidence that he had no knowledge of any association between the claimant and (MM) and did not view any issues in relation to (MM) as fraud. He told the Tribunal that the employee handbook and grievance procedures were common documents located throughout the workplace. He accepted that he told the claimant that he (the claimant) had not followed correct company procedures in relation to his absences on sick leave and he asked him to do so. He told the claimant that his performance and that of the warehouse needed to improve but denied that he told the claimant that if he did not change he would be shown the door.

Determination

The claimant is alleging he was constructively dismissed from his employment with the respondent company. Section 1 of the Unfair Dismissal Act defines constructive dismissal as:

“ the termination by the employee of his contract of employment with this employer whether prior notice of the termination was or was not given to the employer in the circumstances in which, because of the conduct of the employer the employee was or would have been entitled or it was or would have been reasonable for the employee to terminate the contract of employment without giving prior notice of the termination to the employer ”

The burden of proof, which is a very high one, lies with the claimant to show that his resignation was not voluntary. The legal test to be applied is an and or test. Firstly, the Tribunal must look at the contract of employment and establish whether or not there has been a significant breach going to the root of the contract. If the Tribunal is not satisfied that there has been a significant breach of the contract they can examine the conduct of both the employee and employer together with all the circumstances surrounding the termination to establish whether or not the decision of the employee to terminate the contract was a reasonable one.

During the course of the hearing no evidence was given which would lead the Tribunal to conclude that the claimant's contract of employment was breached. Therefore, the question the Tribunal must concern itself with is whether or not it was reasonable in all of the circumstances for the claimant to take the action he took. There is no doubt that the claimant became very unhappy with his employment following the arrival of (CB). There is also no doubt that the claimant was suffering from stress at that time and that that stress was most likely work related.

The claimant gave evidence that he was responsible for seventeen employees and that he had worked his way up the ranks to that position of responsibility. He accepted that he signed for the employee handbook but states that he didn't actually receive it. The Tribunal do not accept this. He was in a position of responsibility within the respondent company and even if he did not have an in-depth knowledge of the procedure he knew of its existence and where to find the information. There is an obligation on the claimant to invoke the grievance procedure before terminating his contract of employment. The Tribunal accept that the claimant may not have been in a position to invoke the grievance procedure whilst he was on sick leave. He should however have done so on his return to work or at any stage prior to

resigning. The Tribunal is satisfied, in all of the circumstances that the claimant's actions were not reasonable and therefore his claim under the Unfair Dismissals Act must fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

