

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE  
*-claimant*

CASE NO.  
UD1616/2009

against  
EMPLOYER  
*-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Browne  
Mr F. Dorgan

heard this claim at Waterford on 25th October 2011  
and 26th October 2011  
and 6th February 2012  
and 7th February 2012

#### **Representation:**

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Claimant: Ms Jane Anne Rothwell B.L. instructed by,  
John N Murphy & Co, Solicitors, 46, Main Street, Dungarvan, Co Waterford

Respondent: Ms Muireann McEnery, Peninsula Business Services (Ireland) Limited, Unit 3,  
Ground Floor, Block S, East Point Business Park, Dublin 3

The claim under the Unfair Dismissals Acts, 1977 to 2007 was one of constructive dismissal;  
accordingly it fell to the claimant to make her case.

#### **Claimant's Case**

The claimant is an experienced qualified accountant. The claimant worked part-time with the respondent until the 21<sup>st</sup> of May 2007 where she became the full-time Financial Controller. The respondent is a large family run business. It was agreed that the claimant would do a 4-day week, Monday to Thursday, being a total of 30 hours. The claimant was responsible for all the accounts and attended the management meetings. The claimant had sight of the staff terms and conditions of employment but she was not in receipt of a copy.

As there had only been a payroll clerk in situ prior to the claimant's appointment she knew there was a lot of work to do to get all the accounts and procedures in order before the

31<sup>st</sup> of July year end. The claimant had a conversation with the respondent owners agreeing overtime hours 2 months after she commenced employment in order to get the accounts in place before the 31<sup>st</sup> of July. If the claimant worked overtime she recorded it in her diary and it would be paid weekly. The claimant worked with one other person and a second staff member that was there infrequently.

The claimant met with the respondent owners every Thursday morning and had a good relationship with all of them. The claimant gave detailed evidence of her daily activities. Any variations in wages was explained on the wage spread sheet which was checked and approved by a director (normally SC) of the respondent before they were paid. The claimant's overtime payment was always highlighted on the wage sheet. The claimant made any alterations if directed before processing the wages with the bank; this required her to enter a code and then a second code to be entered by a director (normally SC or DC).

In May 2008 the respondent employed a consultant (SH) to modernise the business; the claimant was informed that he would not be getting involved in the accounts area. Up until this point her employment was running smoothly, she had caught up with the general accounts and was now implementing the controls and procedures needed for detailed analysis. The claimant met the consultant (JH) in July 2008. The meeting was productive and the claimant highlighted a number of problem areas within the respondent.

At a meeting on the 25<sup>th</sup> of August 2008 the claimant informed SH that there was not enough staff/time to produce quarterly accounts. SH wanted the claimant to produce a budget with a projected 20% revenue increase; this was 'madness' in the claimant's view. SH thought that a 20% increase was realistic. When the claimant told SH that the 20% increase was impossible he raised his voice to her and wouldn't listen to her objections. The claimant felt insignificant and that her opinion wasn't valued. SC 'stood-up' for the claimant. The claimant spoke to SC regularly about her health problems as a result of her working environment. She was instructed to prepare the budget; this would have been a simple task if there had been one in place already but the claimant had to prepare the template from scratch. At that meeting the claimant was informed that she could leave as the 'finance section' was concluded; this had never happened before, she always attended the entire meeting. The claimant left in tears feeling bullied and harassed. The claimant rang one of the respondent owners (father of the siblings) and explained the situation. He said that he would sort it out. As a result the claimant no longer had to attend the monthly meetings and SH did not attend the weekly meetings. The claimant did not attend the September meeting.

The claimant prepared a projected 1% and a 20% increase budget and gave them to DC. As the figures could not be explained the claimant was called to attend the October monthly meeting. The claimant was asked to produce monthly accounts but as there were now weekly and quarterly accounts she felt this was repetition. The claimant's objections were not taken into consideration; she could not complete the task without extra help. The claimant explained the budget at the monthly meeting but everything was 'wrong' for SH; he wanted percentages not figures. The claimant explained that she had to use figures but he said it's 'irrelevant.' The claimant felt under attack as it didn't matter what she said to him. The claimant brought her concerns to the Board on numerous occasions but they were 'sour' after the claimant approaching their father directly.

The claimant composed a draft e-mail in November 2008 to outline her issues. SC was aware that the claimant was preparing the e-mail and asked to view it before it was circulated to the

Board to make sure it was 'safe' as DC had such major issues with the claimant. The e-mail suggested a director not normally in attendance NC attend the monthly meeting as he is a full-time accountant. The e-mail was centred on the claimant's workload and the fact that SH did not realise the implications of his instructions to the claimant's workload. The claimant 'toned everything down' in the e-mail as she didn't want to 'moan'. This e-mail was sent with the claimant's permission to NC. The claimant was then informed that the e-mail had been forwarded to all of the directors in error. SC told the claimant that the 'others' aren't happy and 'DC is going to go for you tomorrow.' The claimant was petrified as she 'knew she would have DC and SH coming after her' even though she was only asking for help.

At the meeting the next day (November monthly meeting) DC told the claimant 'it's your job just do it and stop being petty we could get someone else to do the job - more hours for less money.' At this stage the claimant had 'lost SC' as he was very angry. SC was the claimant's only ally. The claimant had told SC how she was suffering and that it was his duty as her employer to 'protect her from this' but 'none of them were helping me.'

The claimant was instructed not to do any overtime or work from home in November and December. She was also instructed not to purchase any more goods from the company. The claimant felt that 'they were trying to get rid of me.' The claimant's health was suffering and she was very ill but continued to go to work. The claimant continued to attend the monthly meetings. The claimant also worked extra hours without claiming an overtime payment; she carried forward the hours.

TC another director agreed to meet with the claimant to discuss her problems but she was so sick she had to cancel the meeting. The claimant was on sick leave when her salary was stopped. She queried this by letter of the 24<sup>th</sup> of February 2009 as previously she had received sick pay. The claimant requested that she be paid holidays instead of wages if the respondent was not going to give her sick pay. In order to spread the tax liability over the weeks she had been out sick, instead of it being accumulated in one week (as she would be being paid all her wages/leave in one go) the claimant included a method for doing this on their system (net adjust) in the letter. The claimant did not receive a response to this letter.

The claimant met with DC in a hotel where she gave her a memo dated the 27<sup>th</sup> of February 2009 outlining her problems. DC had a terrible attitude at the meeting and said 'how dare you drag me here rather than the boardroom.' The memo detailed the claimant's working problems i.e. not having enough time to complete all the tasks expected of her. DC did not address the fact that the claimant referenced her in the memo saying 'I can get someone else in here to do your job for less pay & work more hours'. DC ended the meeting saying to the claimant, 'you seem fine now - I'll see you on Monday.' The claimant felt her job had changed and the security was gone.

On Tuesday the 3<sup>rd</sup> of March the claimant processed the wages as normal and gave the itemised spreadsheet to DC to sign off. The spreadsheet contained three weeks' pay for the claimant to cover her sick leave; this was made up of holiday pay as detailed in the letter of the 24<sup>th</sup> of February. There was never a response to this letter although DC did have it with her in the following meeting. The claimant was instructed to process the wages but to 'leave hers out.'

The claimant was waiting for DC to discuss the spreadsheet detail when SH called her to an unscheduled meeting. SH had the email the claimant drafted outlining her issues; he was very angry and said 'how dare you put my name down I've never caused anyone stress.'

The meeting lasted 4.5 hours and the claimant was terrified. The claimant told SH that the email was only intended for the directors and as it is 'complaining about you – you were not supposed to see it' to which SH responded, 'I'm now C.E.O. and will be interrogating your position.' The claimant had no notice of the meeting and no opportunity for representation. She had no knowledge of a grievance procedure and the perpetrators, namely SH and DC were dealing with her issues. As per the meeting of the 22<sup>nd</sup> of February the claimant was reporting directly to DC.

As the claimant had received a payment from Social Welfare when she was out sick SH said that the double payment was fraud and that if he had seen that she would have been fired, 'it stinks of fraud and I'm going to investigate.' SH said if the claimant submitted another sick certificate she would be fired. At the same time another sick certificate arrived in the post to the claimant processed by her GP. When the claimant discovered the certificate at home 'she knew she was fired.'

The claimant felt that if the C.E.O. was accusing you of fraud all respect and trust in you as an employee is gone; SH was always trying to undermine the claimant in order that she would walk out and the respondent could replace her. SH took the claimant aside and said 'do you want to leave with your reputation or will I ring the (professional accountancy body) and Social Welfare', he also stated 'don't think you can go constructive dismissal I've been there before.' The minutes of the meeting on the 3<sup>rd</sup> of March were never given to the claimant; she was told at the outset that it was an informal meeting. The meeting concluded with the claimant being informed that she was suspended with pay until the 9<sup>th</sup> of March pending a fraud investigation. The claimant did not receive the letter of the 5<sup>th</sup> of March confirming same. The claimant was very conscious that if she received another sick leave cert she would be fired.

The claimant received a letter dated the 5<sup>th</sup> of March inviting her to attend a disciplinary meeting for misconduct on the 11<sup>th</sup> of March stating an allegation;

*'That you processed three weeks pay/holiday pay to yourself on the payroll system, following on from your letter to us on the 24<sup>th</sup> of February, without expressed permission from your manager prior to you entering pay on the system.'*

The claimant was offered the right to representation and informed that the matter was regarded as potential gross misconduct which can lead to summary dismissal of her employment.

The claimant had requested by letters of the 24<sup>th</sup> of February and the 27<sup>th</sup> of February holiday pay to cover her sick leave; the wage spreadsheet also had to be signed off by DC before payment. The same questions were asked at the disciplinary meeting on the 11<sup>th</sup> of March as were at the meeting on the 3<sup>rd</sup> of March. The respondent would not listen to her explanation on either occasion. SH kept reiterating that 'the trust was broken down and it's fraud.' The claimant was very distressed and was prescribed anti-depressants and sleeping tablets by her GP. The claimant was so distressed she asked for a break in the disciplinary meeting; she went outside and 'broke down', she informed her representative that she could not go back and to resign on her behalf.

The respondent, by letter dated the 11<sup>th</sup> of March asked the claimant to re-consider and follow through with the disciplinary procedure but the claimant was not capable of returning to the workplace. The claimant's representative by letter dated the 19<sup>th</sup> of March responded

outlining her position. By letter of the 25<sup>th</sup> of March the respondent invited the claimant to a meeting ‘in an attempt to resolve the issues that she has in relation to her employment.’

The claimant gave evidence of her loss and her attempts to mitigate her loss.

### **Respondent’s Case**

The consultant (SH) employed by the respondent gave evidence. He was engaged by the respondent to modernise the company and look at the marketing activities. The respondent is a family run business. SH went to monthly meetings with the Directors and the claimant on occasion. The first meeting with the claimant was to engage with her as she was part of the respondent.

The second meeting was on the 25<sup>th</sup> of August where individual roles and tasks were assigned i.e. DC looking after the HR function etc. SH assigned Finance to the claimant and also asked her to prepare a budget. SH asked her to prepare a 20% budget; this was unrealistic but is a management target. Budget preparation is a standard accounting task – not an excessive request. SH does not recall raising his voice. SH is aware that he was asking for big changes in the company and people can be resistant to change.

At the October monthly meeting ‘everything’ was scrutinised not just the Finance function. SH did comment that the figures provided by the claimant were not rounded which is standard practise. SH asked for the figures to be rounded; this was not a criticism just a ‘normal observation.’ SH noticed the claimant was not taking instructions well so ‘went to pains to explain it wasn’t a criticism.’ SH did not intentionally upset the claimant. He only met the claimant 4-5 times over an 8-10 month period. SH did ask the claimant to do additional tasks on a weekly basis; these tasks were not big enough to necessitate working overtime.

When DC received the e.mail from the claimant outlining her issues DC approached SH for advice. He suggested holding a meeting (3<sup>rd</sup> of March) to ‘sort everything out.’ SH does not recall using the word ‘interrogate’ it is not something he would normally say. Likewise ‘there is a smell of stink of it’ is not something SH would say. The Tribunal is satisfied that ‘interrogate’ is a word that SH would say as he said it during another part of his direct evidence to the Tribunal. During that meeting the issue of overtime was raised; SH believes salaried staff are not entitled to overtime. It also appeared at that meeting that the claimant was double claiming i.e. a Social Welfare payment and payment from the company covering her sick leave. SH is not a C.E.O. and is not authorised to let anyone go; he has no disciplinary function whatsoever. SH did not mention contacting the (professional accountancy body.) The claimant was suspended by DC at that meeting; SH was present only to advise on procedures.

At the 11<sup>th</sup> of March disciplinary meeting they were again trying to understand where the claimant was coming from and trying to rectify the situation. The way the wages were processed was discussed and the fact that there was ‘an irregularity of some kind.’ The meeting was ‘going round in circles without an explanation’ until it concluded abruptly. SH accepts that some of his comments could upset someone with a ‘gentle’ nature.

If SH was aware that the claimant felt bullied or harassed by him he would not have been involved in the disciplinary process. The memo from the claimant indicated she was stressed.

The claimant's replacement, also an accountant, gave evidence that the tasks SH was requesting the claimant to complete were not out of the ordinary standard accounting tasks.

SC, a Director of the respondent gave evidence. SC gave the terms and conditions of employment to the claimant who stated that she could also do any H.R. work required. At the meeting where the budget was requested by SH the claimant continued to say she could not do it; a budget was a normal request, it was clarified to her after her objections that it was just an exercise. SC was never in a situation where he had to 'stand-up' for the claimant. SC did not discuss overtime with the claimant and in his opinion she was not entitled to it. Overtime payments for the claimant were never approved at a Board meeting. SC was asked to look at the November e.mail from the claimant; he directed it to another director NC as he was an accountant by profession and forwarded it to the rest of the Directors. SC does not recall being asked to 'vet' the e.mail to make sure it was 'safe.' The claimant never raised any issues with SC. SC was not aware that the claimant had any issues with DC or SH. SH does not recall if he excused the claimant from the September monthly meeting; it was a marketing meeting so she would not be present anyway. SC does not believe SH was forceful or strident with the claimant at any time. When the claimant requested that NC attend the next meeting his response was that NC had his own full-time job.

The Directors discussed the e.mail from the claimant on the 18<sup>th</sup> of November and decided to review her workload. NC said that her workload was all normal and within an accountant's remit. SC then met the claimant on the 20<sup>th</sup> of November with DC; the meeting went well. SC did not warn the claimant that 'DC was out for her' at any time.

DC, a Director of the respondent gave evidence. The respondent wanted monthly accounts and better reporting systems in general. As the company accountant this duty fell to the claimant. The claimant refused to sign the terms and conditions of employment when given to her even though she offered to look over them for the rest of the staff as 'she had done a course.' The claimant was a salaried worker and therefore not entitled to over-time.

Before the claimant attended the August monthly meeting it was agreed that a 2% and a 20% budget would be done; SH did say that the 20% was never going to happen. The claimant was asked to complete the budgets but said the 20% was unrealistic, SH explained in a normal manner that the 20% projection was just 'for them to look forward.' In September the monthly meeting was only about marketing issues so the claimant's attendance was not required; she was not 'excused' because of SH's behaviour. At the October meeting the finances were discussed; the claimant did not mention being overworked. On receipt of the claimant's November e.mail DC thought there must be an issue with the claimant's workload; NC said her workload did not look unreasonable. As well as the claimant the respondent also employed a bookkeeper and someone to look after stock control. DC never told the claimant to 'stop being petty I could get someone cheaper to do your job.' DC and SC had a meeting with the claimant, they went through the e.mail in detail and DC explained that SH was aware that the 20% budget was 'irrelevant' and that he was not dismissing what she was saying on the matter. DC was trying to put an end to the budget matter as the exercise was now complete. DC told the claimant that SH wasn't trying to 'overcome' you it was just a normal disagreement over the figures. The claimant stated how much overtime she had to work and DC questioned the fact that the claimant didn't take any time in lieu for the overtime; the claimant responded saying she got paid for it. Before November the wages were not being signed off by a Director. DC had no prior knowledge of overtime payments being made to the claimant. The claimant was instructed to stop working overtime.

There was no December meeting and the January meeting went smoothly. The claimant went on sick leave on the 3<sup>rd</sup> of February. On Monday the 24<sup>th</sup> of February the claimant's handwritten query regarding her sick pay was received; she texted to say she would be back to work the following week and asked to meet to discuss a few things. DC had received a letter from Social Welfare to say the claimant was being paid so she wondered why the claimant was requesting to be paid by the company. DC only discovered later that it was normal practice to return the Social Welfare cheque to your employer if paid.

DC met the claimant and she was handed a memo outlining the claimant's issues. DC didn't respond to the claimant straight away not because she was being dismissive but because she did not have any answers for her and she was overwhelmed by the four-page document. The claimant never said SH was bullying or harassing her. DC was shocked when the claimant said she was being caused stress.

DC asked SH to attend a meeting with the claimant. DC thought that if she put them both in a room together they might be able to have a discussion and sort things out. SH told the claimant that as he had only met her couple of times he couldn't understand how she could have a problem with him. As a lot of her problems were down to lack of time they discussed the claimant working an extra day; she said she would look into it.

DC instructed the claimant not to process the wages as it had three weeks holidays for the claimant to be paid. DC was unhappy with the wages/Social Welfare situation and the fact the claimant hadn't asked her first. DC decided the claimant had processed her holiday pay and decided that 'I needed to send her home for a few days with pay.' DC wanted to investigate the situation and all the files are located beside the claimant's desk. DC discovered a payslip for the claimant which drew her attention as she had instructed her not to pay the three weeks holidays due. The spreadsheet sign off and pay-slip are the final step in paying the wages. The claimant was not in receipt of the payment. There was also a non-taxable amount on the payslip which neither DC nor NC could explain. DC checked all the previous payslips and didn't discover anything untoward except that the claimant had been getting paid overtime until she was asked to stop in November.

A disciplinary meeting was arranged for the 5<sup>th</sup> of March. DC was aware that the claimant was not in receipt of the three weeks' pay but the problem was that the claimant had processed it without discussing it with her. SH was at the meeting as DC's advisor. The claimant advised that the pay was only up for discussion and that it had not been processed fully or paid. At the conclusion of the meeting DC had not received a satisfactory explanation from the claimant as to why the wages were processed so far. There were no discussions regarding sanctions for the claimant. After a break in the meeting the claimant's representative returned and resigned on the claimant's behalf.

If the claimant or any other staff member had any difficulties it was decided that DC would be the only point of contact as the HR Manager. DC was not aware that the claimant had a problem with her specifically or that she was stressed; all she knew was that only the claimant's workload was too great. The claimant's letter did say she was stressed but the claimant seemed fine at the meeting where she handed DC the four-page document and she did not get the impression the claimant was feeling bullied or harassed. DC said her behaviour did not change towards the claimant following the November e.mail. DC felt that it was a clash of personality between the claimant and SH and that if they talked about it the situation could be resolved.

## **Determination**

Having considered the evidence adduced at the hearing the Tribunal finds that the respondent did not engage in bullying or harassment to the extent or at all such as would entitle the claimant to consider herself constructively dismissed. Rather, the Tribunal finds that the claimant did not relish the idea of change or the arrival of another party which she appears to have perceived as standing between her and the respondent.

However, on the evidence, the Tribunal is satisfied that the respondent was happy to see the claimant go such as would entitle the claimant to consider herself constructively dismissed. This issue was not advanced by the claimant but nonetheless the Tribunal feels it would be unjust for the Tribunal to ignore it. Accordingly, the Tribunal finds that the claimant was entitled to consider herself constructively dismissed and the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the Tribunal awards the claimant compensation in the amount of €7,000.00.

The Tribunal makes no finding as to whether the claimant is suffering from a disability such as prevents her from returning to the work force but if the claimant is suffering any such said disability the Tribunal is not satisfied on the evidence before it that this was caused by the respondent.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)