

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

- *claimant*

CASE NO.

UD1356/2010

against
EMPLOYER

- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan BL

Members: Mr J. Hennessy
Mr F. Dorgan

heard this claim at Kilkenny on 12th December 2011 and 28th February 2012
and 29th February 2012 and 13th June 2012 and 14th June 2012

Representation:

Claimant: Mr Robert Beatty BL instructed by O'Mara Geraghty McCourt, Solicitors, 51
Northumberland Road, Dublin 4

Respondent: Ms Eugenie Houston BL instructed by O'Rourke Reid & Co., Solicitors,
Pepper Canister House, Mount Street Crescent, Dublin 2

The claim before the Tribunal was one of constructive dismissal.

Claimant's Case

It was the claimant's evidence that her employment with the respondent commenced in 1998. The respondent is a credit union. It was the claimant's evidence that she had a perfect employment record. In 2003 the claimant received a new contract which described her role as clerical assistant but by 2004 the claimant's role had developed into the manager's assistant which entailed extra responsibilities. The claimant was the most senior member of staff aside from the manager who was her mother.

It was the claimant's evidence that on 19 September 2008 the credit committee was meeting. The claimant was approached by the Chairman of the supervisory committee and asked if she had an extra set of keys she could provide him with. The claimant replied that she did not but that she was not in any hurry to leave and in the end the claimant, the committee members and the claimant's colleague all left together at 8.15pm. The Chairman of the supervisory committee was also the partner of the claimant's colleague (PD), who was the most junior member of staff having commenced her employment in 2007.

In or around the 30 September 2008 the claimant was informed by the manager that an issue

had been discussed at the board meeting that the claimant had refused to give keys to the Chairman. The claimant outlined what had happened on 19 September 2008. The claimant was hurt by this lie and did not know why the allegation was made.

It was the claimant's case that things at work began to change slightly in the credit union during October 2008. The claimant stated that she would usually prepare files on a Friday night to assist the credit committee but she ceased to carry out this duty when the files were taken from her.

The credit union held its A.G.M. at the end of November 2008 and a lot of preparation was required in the lead up to the meeting due to the volume of postal information. On Friday, 21 November 2008 PD approached the claimant and asked to speak with her. PD said that she thought the claimant was not speaking to her and the claimant reassured her that this was not the case and that she had felt the same about PD. The claimant told the Tribunal that a week earlier she had not received much communication from PD and at times PD did not answer the claimant when she spoke to her. PD told the claimant that on one of the days they were preparing the postal information she had attempted to speak to the claimant on a few occasions. The claimant apologised if that was the case and said that it had been a very busy day. PD told the claimant that she had decided the previous week to give the claimant a "taste of your own medicine." The claimant was shocked by this and said to PD that if there was a problem to communicate with her. PD said she might have been over sensitive and they shook hands on the matter.

The claimant returned to work after the weekend on Monday, 24 November 2008 and was informed by the manager that PD had lodged a complaint against her after the claimant had left work on Friday, 21 November 2008. The claimant was upset and in turn lodged a verbal complaint to the manager about PD.

The claimant subsequently received a letter from the treasurer (DT) dated 2 December 2008 stating that he would deal with the complaint as swiftly as possible and he requested the claimant to outline the details of her complaint against PD in writing. A similar letter was sent to PD. The claimant sent letter dated 5 December 2008 to the treasurer outlining her grievance at that time; however matters progressed further in the following months.

The atmosphere in the office was strained. As nothing had happened in relation to the issue the claimant telephoned the treasurer on 23 December 2008 as she was worried. The treasurer told the claimant that he had not received any communication from PD. The claimant told him she was concerned as it "was hanging over" her. The treasurer said to the claimant that in his mind if PD had a genuine complaint she would have sent it in and that he did not want to push the matter as he did not know what the Chairman of the supervisory committee would do.

The claimant outlined that the working conditions in the office deteriorated due to the bad atmosphere in work and she ceased to like going to work as "it was a horrible place to be." The claimant began to feel left out and isolated by other members of staff.

The claimant outlined to the Tribunal that on 2 January 2009 she overheard PD shouting when the manager addressed with her that she should be working in the sub-office. PD shouted that the claimant could go instead. On that same date PD bent a ruler in half and said to the claimant, "you just remember you started all this." It was not until this date that PD lodged her written complaint against the claimant. However, the claimant was not given sight of this

complaint until 29 January 2009.

Prior to this the claimant wrote a letter dated 5 January 2009 to the treasurer and the Chairman of the credit union stating that it had been 40 days since she had lodged her complaint and she requested a copy of PD's complaint and an opportunity to respond. The claimant also telephoned the Chairman of the credit union on 12 January 2009 and requested a copy of PD's complaint, the Chairman was hostile with the claimant and said he would have to speak to the board and that the claimant would just have to wait.

The claimant was emotional and unable to sleep. She attended a doctor on 14 January 2009 as matters were starting to affect her home life. The doctor certified the claimant unfit for work from 15 January and prescribed her some medication. However, the claimant returned to work on 26 January before the date specified by the medical certificate. During the time the claimant was on sick leave the manager called to the claimant's house on 15 January 2009 with a letter from the Chairman of the credit union which informed her that the treasurer was no longer available to deal with the matter any further and that the board of directors had appointed three of its members to meet with the claimant on 16 January 2009.

Although the claimant was on sick leave she attended the meeting on 16 January 2009 as she did not know whether or not it was optional to attend or what the meeting was about. The claimant was unsure if she properly conveyed herself at the meeting. The claimant was not offered a representative. The meeting was an informal meeting about the claimant's verbal and written complaint and PD's verbal complaint and how the complaints had arisen. The claimant again requested a copy of PD's written complaint but was not provided with it. The claimant was informed that the meeting was about her grievance and the claimant told the three members that the grievance had changed a lot since she had made the initial grievance and that matters were now worse. The claimant was asked a few basic questions about how things were in the office but there were no witnesses present and no witness statements taken or provided.

Following this meeting the claimant received letter dated 19 January 2009 from the Chairman of the credit union informing her that a meeting of the board was being arranged. The claimant did not understand what the delay was or why the matter was not just dealt with. In the claimant's mind the matter was never going to be resolved.

The claimant was informed by letter dated 26 January 2009 that a human resources consultant (SS) had been engaged to address the issues raised by the claimant and PD. The claimant was requested to attend a meeting with SS on 30 January 2009.

The claimant was finally provided with a copy of PD's complaint on 29 January 2009 the night before the meeting. The claimant found the contents of PD's complaint distressing but compiled a detailed response to the complaint that very night. The complaint detailed issues over a period of time whereas the claimant had thought that PD's only issue was the discussion that had taken place between them in November 2008. The claimant addressed the complaint section by section.

The claimant was nervous when she met with SS on 30 January 2009. When the claimant showed him that she had prepared a response to PD's complaint, SS told her that there was "no point getting into that." At the time the claimant believed that SS was engaged to resolve matters between herself and PD but she later found out that he was also conducting an independent review of the credit union and as part of that he was investigating

the claimant with regard to loans that had been approved.

The claimant thought that SS would go through all the complaints from the start and deal with the difficulties that she was experiencing. The meeting lasted 20 minutes and SS would not look at what she had prepared but pushed it away. The claimant lost heart as she did not feel that SS was there to sort out the issues. During the meeting the claimant discussed issues with the running of the credit union and instructions that were not being carried out. In response to this SS suggested that the claimant write out such instructions and he suggested a communications course which the claimant agreed to.

On SS' instruction the claimant returned to work the following day and typed instructions for the front of folders. PD became angry and in any event matters did not improve after all of the staff had attended a communications course in February and the *status quo* continued.

On 7 March 2009 the claimant's mother was suspended from her position as manager of the credit union. On 11 March 2009 the claimant made three withdrawals from accounts belonging to her and her husband. She was subsequently asked to return these funds to the credit union. SS had submitted a report to the board but the claimant was unaware of this at the time. A number of loans were the subject of the report as eight families had accounts that breached the credit union rules; the claimant's account was one of those as was her mother's.

A memo was issued to all staff on Thursday, 12 March 2009 about new policies being put in place. A verbal altercation also occurred with PD that date but the claimant felt that she had no one to report it to. The claimant did not return to work after this date. She attended a doctor the following Tuesday and was prescribed medication. The claimant was subsequently absent on sick leave. On 2 June 2009 the respondent requested to send the claimant for a medical assessment by the company doctor. The claimant subsequently attended the company doctor on 10 June 2009 who found that medical treatment would assist the claimant's health status but that it was clear that underlying matters needed to be addressed.

A second letter dated 2 June 2009 also issued to the claimant from the Chairman which referred to the complaints made in December and January by PD and the claimant. The letter stated that these remain an "open" issue. However, as informal resolution had been unsuccessful it was now the intention of the board of directors to investigate these complaints on the claimant's return to work.

The claimant stated that she knew that she was unfit to return to work and in her mind it was never going to be resolved. The claimant considered that she would be forced to return to work in order to have the matter dealt with and she thought the fact that it would not be dealt with until she returned was another excuse. The claimant responded with a letter also dated 2 June 2009 stating the effect that the matter had on her and that she was not in a position to return to the workplace.

The claimant attended a doctor in August 2009 and another healthcare professional in November 2009 and February 2010. By the time the claimant attended the healthcare professional on 27 November 2009 her situation had not improved. She subsequently sent a letter of resignation dated 5 December 2009 to the respondent.

The claimant stated that had matters been dealt with by the respondent she would still be

employed there even though the respondent had issues it wanted to discuss with her. The claimant she felt that she would have been able to address these matters.

Respondent' Case

The former treasurer of the credit union known as (DT) gave evidence that he was appointed treasurer in November 2008. Within days of his appointment he was asked to carry out an investigation into the claimant's grievance. He wrote to the claimant on 2 December 2008 requesting her to outline the details of her complaint. He received a reply on 5 December 2008 outlining the details of her complaint. He confirmed that he received a further letter from the claimant dated 5 January 2009 stating *inter alia* that she had received no response to her reply letter of 5 December 2008. He gave evidence that he stepped back from dealing with the claimant's grievance because he felt that he had a conflict of interest. He told the Tribunal that he had a business loan from the credit union and his business was struggling. He was also a neighbour of the claimant and did not want to be seen to be taking sides. He felt that the situation was above him and he was "in over his head." He also had a sick child and his first priority was to his family. His role as treasurer was a voluntary role and his priority was to his full-time paid job. He believed that he was out of his depth and did not want to do anybody a disservice. He tendered his resignation to the board and this letter was opened to the Tribunal.

The next witness known as (MM) gave evidence that she was appointed treasurer of the credit union on 5 February 2009. This was a voluntary position and she worked in her full-time job as an administrative officer with a local authority. She gave evidence that her position as treasurer of the credit union was essentially a Managing Director's position. She had been a member of the credit union for 30 years and was appointed to the board of directors in 2006. She gave evidence that on 13 January 2009 the grievance issues of the claimant and PD were brought to the attention of the board. She, along with other board members met with the claimant and PD separately and informally on 16 January 2009. Both the claimant and PD said they wanted the matter sorted out to allow them get on with their work. The board made a decision to contact the Irish League of Credit Unions to assist them in their efforts to resolve the situation. The League suggested that an independent consultant known as SS be engaged by the respondent and the respondent accepted this advice.

SS met with the claimant and PD and reported back to the board that there was a serious communication problem within the credit union. He recommended that the issues needed to be addressed through training within the respondent organisation. SS was also asked by the Chairman of the board to sit in on a board meeting on the night of 17 February 2009 where a discussion took place concerning loans within the credit union. He was then engaged to carry out an examination of the top 50 loans, in terms of amounts, within the credit union. This engagement was unrelated to his initial engagement relating to the grievances of the claimant and PD. He commenced work on that process on 21 February 2009 and reported back to the board on 27 February 2009. He presented serious issues to the board and his report indicated that the credit union had serious problems.

The witness gave further evidence that on 6 March 2009 she contacted the Financial Regulator and informed him that the credit union had problems in relation to lending. The Regulator immediately put a restriction on the credit union's lending to €5,000 per loan or €50,000 per month. Prior to the imposition of this restriction the typical loan ranged from

€10,000 to €12,000. The claimant's mother, who was the manager of the credit union, was suspended on Saturday, 7 March 2009. On the following Monday two field officers arrived from the League and commenced a formal inspection of the credit union. The board was now required to report twice daily to the Regulator. The witness told the Tribunal that she spoke with the claimant and (PD) and issued them with a note concerning the new lending practices to be followed. On 11 March 2009 the witness along with the chairman of the board known as (MK) met with 3 staff from the Regulator's office. They were informed that the doors of the credit union were being left open but the credit union was basically insolvent.

The Tribunal heard further evidence from the witness that *circa* 5 pm on 11 March 2009 she was informed by another employee known as (MM1) that the claimant had withdrawn a total of €18,600 shares in three transactions belonging to herself (the claimant) and the claimant's husband. This withdrawal had not been authorized. On the following morning at 8.30am she contacted the claimant and instructed her that the said three transactions be cancelled as the shares were tied to loans. She instructed that the funds be returned to the credit union. On 12 March 2009 cheques to the value of €12,600 were returned to the credit union but an outstanding cash amount of €6,000 was not returned and has never been recovered by the credit union. The witness reported these events to the board on the night of 12 March 2009 and a further issue concerning an unauthorized loan of €120,000 made to the claimant's husband was also discussed. This was one of the top 50 loans that had been examined by (SS). It was decided at the meeting that the claimant be suspended pending an investigation. On Friday 13 March 2009 the witness received a call from the claimant's husband stating that the claimant would not be reporting for work as she was sick. The claimant never reported back to work from that date and the suspension was not carried out.

There was no copy of the claimant's contract of employment on the credit union's files. The claimant had been in employment for 10 years and the claimant's mother was the manager of the credit union when the claimant commenced employment. The witness was unaware of what documentation was relied upon by SS in his identification of a serious communication problem within the credit union. She did not have any discussion with him regarding documentation but was satisfied that he was addressing the issues. She confirmed that a day's training occurred on 12 February 2009 and she did not ask the claimant if she was satisfied with the outcome as events moved on very quickly concerning the Regulator.

The former Chairman of the credit union known as (MK) gave evidence that he along with other board members met with the claimant and PD in an attempt to resolve difficulties between them. They were unable to resolve the difficulties and SS was engaged by the credit union to try and resolve the matter. SS did not request any documentation, he just wanted to sit down with the parties and discuss the issues. Training was organized as part of the outcome but the witness had no involvement in that process. He had no involvement in the suspension of the manager. The claimant was absent from work on sick leave and wrote to the witness by way of letter dated 5 May 2009. This letter was opened to the Tribunal and summarised the claimant's complaints and stated that she wished to invoke the grievance procedure. The witness replied to this letter on 2 June 2009 informing the claimant that it is the intention of the Board of Directors to investigate the complaints and will do so on her return to work. Ultimately the claimant did not return to work and further letters exchanged between the parties following the claimant's letter of resignation dated 5 December 2009. These letters were opened to the Tribunal.

The witness gave further evidence that he knew the claimant quite well and found her

accommodating in the workplace. He attempted to resolve the difficulties between the claimant and PD but was unable to do so. He described the difficulties as “schoolyard bullying”. He confirmed that a day’s training was provided on 12 February 2009 and a review was scheduled to take place one month later. This review did not take place as the claimant was absent on sick leave.

Determination

Having considered the evidence adduced at the hearing the Tribunal accepts that there were difficulties between the claimant and her work colleague since in or about April 2007. The Tribunal finds that when the respondent was first notified about these difficulties in November 2008 the respondent met with both parties and believed, in circumstances where it was reasonable to so believe, that both parties would put their difficulties behind them and move on. This did not happen and efforts were made again by the respondent to resolve the difficulties between the claimant and her colleague. The Tribunal finds that the efforts made by the respondent were reasonable in all the circumstances.

The Tribunal notes that the claimant did not leave her job there and then as a result of any difficulties between her and her said work colleague and despite any perceived failure of the respondent to deal with the matter but attended work up to 13 March 2009 save for one short period between 15 January and 24 January 2009 when the claimant was absent on sick leave due to “acute debility”.

The Tribunal finds that there were other issues unrelated to difficulties between the claimant and her said work colleague as could result in the claimant suffering stress related illness such as changes brought about by the advent of the Financial Regulator and the suspension of her mother.

The Tribunal finds that the respondent did not engage in conduct sufficiently grave or any conduct such as entitled the claimant to consider herself constructively dismissed. Accordingly the claim under the Unfair Dismissals Act 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)