

## EMPLOYMENT APPEALS TRIBUNAL

### CLAIM OF:

EMPLOYEE - *Claimant*

### CASE NO.

MN390/2011  
UD402/2011  
WT130/2011

against

EMPLOYER - *Respondent*

under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr D. Morrison  
Ms A. Moore

heard this claim at Letterkenny on 4th September 2012 and 28<sup>th</sup> November 2012.

### Representation:

Claimant: Mr. Peter Nolan BL instructed by:  
Gallagher & Brennan, Solicitors, House B, Carnamuggah,  
Upper, Kilmacrennan Road, Letterkenny, Co Donegal

Respondent: Tiernan Doherty, IBEC, Floor 3, Pier 1, Quay Street, Donegal Town

The determination of the Tribunal was as follows:-

### Claimant's Case:

The claimant gave evidence. She first commenced employment with the respondent on a part-time basis in March 1998. She left school and after her child was born she commenced working 18 hours a week for the respondent. In 2005 she commenced a course, of which the respondent was aware of. The course completed in 2009.

The claimant worked in the butchers department which was located beside the delicatessen (deli) counter. She was asked to cover the deli counter but she had some issues with it as she had not received any training and it was totally different work. She questioned her contract as to whether she could be moved. She met with her counter manager (GM) and the Human Resources manager (JMcC) who informed her that she could be moved, it was in her contract.

In late February / early March 2010 her daughter got ill one evening and she had no option but to take the following day off as she was to start work at 7.30 am. She contacted one of the night staff. She took only one day off.

On her return she went to the HR department requesting force majeure leave for the previous day. She was told that a force majeure day would only be given if a close relative had been hospitalised but not a sick child. The claimant said she had been authorised a force majeure day in the past. She was informed they would look into it. She asked HR on several occasions over a period of 6 weeks what was happening and was told it was being looked into.

1 to 2 weeks later her manager (RG) was walking past as the claimant was talking to a colleague, when she returned to the counter RG began shouting at her. Customers and staff were present nearby. She was very embarrassed and angry. Before she could answer her RG walked away. She spoke to her union representative and was very upset. She was called to the personnel department to see the personnel manager and RG, her union representative accompanied her. She told RG that the way she was spoken to on the shop floor was unacceptable, rude and unprofessional. RG replied that she was embarrassed.

On another occasion RG was at the fish counter and shouted at the claimant to come over to her. She went over and was asked why the counter was not stocked. She told the Tribunal that BOG knew her schedule; she would put out the ice, drop her daughter to school and on her return put the fresh fish out for display. RG replied that she could lay out the counter in an hour and therefore so could she (the claimant). RG told her the counter had to be set before 9 am but the claimant had not been informed.

On a following occasion a colleague gave her an item saying that RG had told them to give it to her as RG was not talking to her.

RG enquired with staff what the claimant was like. The claimant felt it was inappropriate, she was hurt and felt isolated. RG only spoke to her in a derogatory manner and would stand and watch if she was speaking to any of her family. She could not understand why RG had a problem with her.

The claimant began to have medical problems and suffered with stress and irritable bowel syndrome. She attended her doctor and was prescribed medication. Her colleagues were aware of her stress. On one morning she slept late and texted a colleague. When she arrived to work RG called her over and shouted at her when people were present. She clicked her fingers and told her she should not have texted another colleague but have contacted her directly. This continued for 2-3 minutes. She was only 25-30 minutes late for work.

She went to the personnel manager (AC) to inform her what was going on. She felt bullied and harassed by RG. AC took some notes and said she would look into the matter but nothing happened. In June 2010 she attended a meeting with her union representative and the store manager (MOR). She informed him that she felt she was bullied and harassed, was unsupported by management, was very unhappy and the situation was affecting her health. The meeting lasted about 1 hour. Notes were taken. MOR told her that it was not the way things had happened, and not the way he had been informed. He said he could not understand why it was all RG's fault. MOR spoke to RG and then spoke to the claimant. The claimant told the Tribunal that it was made to look like it was all her fault. MOR said some of her colleagues had spoke to him and said it was all her fault but no specific allegations were put to her. When she

asked who would have complained he replied that “he could not say”. He told her, her work was not up to scratch. She was told to go on holidays and to “buck up”. She felt bullied by MOR at the meeting.

On her return from holidays, July 9<sup>th</sup> 2010, she met with MOR but he did not seem to listen to her complaints. The meeting ended as she had to leave to pick up her daughter. The claimant had been ill while on holidays and on her return to work ended up back on sick leave. On 23<sup>rd</sup> July 2010 her wages were not in her account. She attended the store but no-one would speak to her. She telephoned and was put through to the manager in the cash office. She tried to speak but the line went dead, she called again and someone else answered who informed her the manager was on another call and she could speak to AC. There was no answer on her line and she rang again 4-5 hours later and was kept on hold for 6-7 minutes. When she spoke to AC regarding her lack of payment of wages she was informed that the manger had decided not to pay her as she had broken staff policy. Medical certificates needed to be handed in personally or by a family member. It was the first she had heard of the matter as there had been no problems in the past.

The claimant’s union representative informed her she had lost the first 3 days of her certified sick leave after she had explained the situation to her. The claimant told the Tribunal that she was terrified to return to work but she had a child and had bills to pay.

AC contacted her 1-2 months later. The claimant told the Tribunal that she felt she had no choice but to resign and had done so under duress after 13 years service. She was asked by AC why she was resigning and replied she had no choice as she had told the respondent of her issues and nothing was done.

The claimant gave evidence of loss and her mitigation of same.

Under cross examination the claimant denied that MOR took on board anything she said about being bullied, he told her it was unprofessional to be late, she wasn’t doing her job properly and there were complaints about her. She didn’t walk out of the meeting of 9<sup>th</sup> July, it was 15 minutes after the time she had to collect her daughter so she excused herself and left. Asked if MOR made any promises she said no, just to buck up her ideas when she returned from holidays. She felt hurt and it was like being bullied all over again. After a period of sick leave she handed in her letter of resignation. She was not aware of any copy of bullying and harassment procedure in the store.

### **Respondent’s case:**

MOR gave evidence that he met with the claimant along with her shop steward. He let her speak first and took a note of what she said. She talked about bullying from her line manager and not having support from her colleagues. The claimant was going on two weeks holidays and he gave her a commitment to resolve the issues she had raised. MOR had issues with the claimant as well. At the end of the meeting she just got up and walked out, saying that he wasn’t listening to her. MOR has not heard from her or seen her since. She did not hand him her letter of resignation. He stated that if she had allowed the complaint to go to stage 3 and 4 all sides of the argument would have been listened to and an external party would be brought in if necessary.

Under cross examination MOR stated that he never got a chance to show the claimant the notes

he took. He did not think there was a bullying and harassment procedure but there was a grievance procedure in the store. He advised the claimant that he would have his findings when she returned to work but she didn't return. The claimant left her letter of resignation at the desk for his attention, he didn't know why she would say she handed it to him. He had no notes of the meeting held with RG or of conversations with her colleagues and he never received a complaint about her except via her manager RG. MOR was aware of previous difficulties with the claimant. He did not mention the company bullying and harassment policy to the claimant at the time of the meeting as he wanted to get all the details first.

### **Determination:**

The Tribunal has carefully considered all the evidence of the witnesses and the submissions of the representatives.

This is a case of what is commonly referred to as "Constructive Dismissal", where an employee has resigned but claims that their resignation was forced by the conduct of the employer or of others at work. In such cases, the onus is on the employee to satisfy the Tribunal that their resignation was justified.

It is very important for employers to have written policies on bullying and harassment (often described as dignity at work policies), and grievance and disciplinary matters. However, these policies must not only be written down, they must also be made available to managers and staff and managers should receive proper training in their implementation and staff should be properly briefed as to their existence and how to invoke them. These policies are put in place for the protection of both employer and employee. If the policies are implemented properly, very few cases of conflict within the workforce will need the intervention of an outside body.

In this particular case, the Tribunal accepts that there was a comprehensive written grievance policy and also a comprehensive written dignity at work policy. However, the claimant's evidence to the Tribunal was that she had never seen these policies, nor were they ever brought to her attention. While there are considerable conflicts between the claimant's evidence and the evidence produced on behalf of the respondent, the following was common case:-

1. The claimant made a complaint of bullying to the HR Manager initially but was not given a copy of the dignity at work policy or made aware of it at that meeting, in complete conflict with the terms of the policy itself.
2. The Store Manager did not deal with the claimant under the dignity at work Policy and in evidence seemed unaware of the existence of such a policy.
3. The Store Manager did not contact the claimant after the end of their meeting, nor did he make any attempt to communicate to her his findings arising out of what he considered as her grievance complaint.

The Tribunal preferred the evidence of the claimant to the evidence of the store manager as to what transpired at the meeting and subsequently. The claimant's evidence of bullying was compelling, and the respondent through its store manager not only did not deal with, but appeared to put the blame on the claimant herself. The Tribunal did not accept that the claimant's absence on sick leave abrogated the store manager's responsibility in dealing with her complaint.

The respondents' representative in an excellent submission argued that the claimant's decision to resign was premature as he claimed she had not completed all internal procedures and had not given the respondent the opportunity to deal with her complaints. In this regard however, the Tribunal finds that as the respondent did not apply or even inform her of its own dignity at work policy it dealt with her in such a fashion that it was not reasonable for her to be expected to continue working with the respondent.

The Tribunal therefore finds that the claimant was unfairly dismissed. The Tribunal considers that the appropriate remedy is compensation. In this regard, taking into account the evidence of loss adduced to the Tribunal, the Tribunal awards the Claimant the sum of Seventeen Thousand Euro (€17,000.00) as compensation for Unfair Dismissal.

No evidence was adduced in relation to the Organisation of Working Time Act, 1997 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and these claims fail.

Sealed with the Seal of the  
Employment Appeals Tribunal

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