

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE - claimant

UD1663/2010

Against

EMPLOYER

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. Gilvarry  
Members: Mr. D. Morrison  
Mr. M. McGarry

heard this claim at Castlebar on 6 March 2012 and 13 June 2012

Representation:

Claimant(s):

Egan Daughter & Co, Solicitors,  
Castlebar, Co Mayo

Respondent(s):

Mr. Eamon McCoy, IBEC, Confederation House, 84/86 Lower  
Baggot Street, Dublin 2

This was a claim for constructive dismissal and therefore it fell to the claimant to go into evidence first.

The claimant commenced employment with the respondent as a Sales Advisor on 30<sup>th</sup> April 2007 and resigned, by letter dated 21<sup>st</sup> February 2010, with immediate effect.

Initially the claimant was happy in her work but when a new consultant in charge of the show rooms (AD) was appointed this all changed. AD became the direct supervisor of the claimant and came across as abusive and aggressive and the claimant felt uncomfortable with her presence. The claimant was often reprimanded by AD.

There was a reorganisation within the company and SP became the claimant's manager. SP was also AD's manager. The claimant owned the house in which she lived and SP rented a room from her. SP became aware, through informal conversations at home, of the claimant's unhappiness with regard to how she was being treated by AD. The claimant expected SP to do

something about this but he never did.

The claimant handed in a letter of resignation on 14<sup>th</sup> June 2009 because she was unhappy but she later decided not to resign. The relationship between the claimant and AD had deteriorated by this time. The claimant told the Tribunal that AD had claimed commission on sales that ought to have been accredited to the claimant and on one occasion challenged this and received €40 in cash from the “petty cash”.

SP called the claimant to a meeting on 15<sup>th</sup> June 2009 and asked her what the problem was. The claimant informed SP that she felt intimidated by AD and gave him a general overview of how she perceived AD. She did not refer to any specific incident. SP referred to an idea he had with regard to re-shuffling staff with a view to splitting the claimant and AD. However SP did not re-deploy the claimant and things escalated after that.

An annual review of the claimant had been carried out by SP on 2<sup>nd</sup> June 2009 but this, along with that of 20 other staff members was later mislaid. There was a visit by Head Office in November 2009 and by this time SP was no longer working in the same store as the claimant. Nobody had been appointed to replace SP and therefore a review of the claimant was carried out by AD. The claimant was not happy with this and felt that she was given an unfair review. Another manager was subsequently appointed and they also carried out a review of the claimant. Again the claimant was dissatisfied with this review and asked NH to have it struck out.

The claimant did not make a written complaint but felt that management was well aware of her grievance and did nothing about it. The claimant felt that, in the circumstances, she had no option but to resign and tendered her written resignation with immediate effect from 21<sup>st</sup> February 2010.

When the case resumed on the 13 June 2012 KON gave evidence of renting a house with the claimant along with SP a former deputy manager of the respondent. At meal times he witnessed conversations between the claimant and SP regarding the difficulties she was experiencing in the work place. He recalled hearing the claimant tell SP that she was constantly undermined. SP was very aware of the issues and said he would deal with it in the store. He told her what happens in the store stays in the store and there was no need to contact head office or human resources.

NH the manager of the store at the time described the claimant as a skilled sales adviser in the kitchen and bathroom department. SP the sales manager had left the store on the 28 August 2009 and his replacement CM commenced on the 9 November.

The claimant complained that a commission on a sale which she led was robbed from her. In such circumstances the store manager decides who carried out most of the work on the sale and a decision on commission is made on that basis. After meeting both employees and looking at the final design AD was given the commission on the sale and the claimant given commission on the initial lead. The witness confirmed to the Tribunal that AD was not a manager but held a role of sales consultant which was considered a senior sales advisory role. With regard to the claimant indicating in June 2009 she wished to resign he had no knowledge of this and explained that SP was her direct line manager. He recalled the claimant seeking to move to a different area in the store but as there was no vacancy at that level elsewhere a move could not be facilitated. There were no communications regarding resigning from the claimant and he was

unaware of any allegations including threats made by AD to the claimant. Bullying and harassment was never raised by the claimant. NH denied that a review carried out by AD on the claimant was negative and rather highlighted she was a team player with a good attitude. In the period January to February 2010 he was unaware of the claimant having further problems with CM and denied matters were ever swept under the carpet. He explained the company had a grievance procedure which required an employee to report matters to their line manager, use the helpline or report to the HR manager and put grievance in writing. He further outlined details of training and two day induction course provided to all employees including the claimant in advance of the store opening. Following the claimant's resignation in February 2010 he was unable to explain why an exit meeting was cancelled by him and never rescheduled.

CM gave evidence of commencing as sales manager at the store in November 2009. She recalled dealing with an issue regarding commission on a sale which occurred on the 8<sup>th</sup> February. AD had sold a kitchen however the customer cancelled the order and the claimant when processing the refund deducted commission on the sale from AD. In order to clear the matter up CM arranged a showroom meeting for the 15 February 2010 to explain the correct process to avoid further problems with commission. That meeting never took place. On the 20 February she conducted a performance review with the claimant and because she had only worked with her for three months she consulted with NH. From the review a performance improvement plan was recommended for the claimant. It was intended that AD would assist the claimant with her final sale technique however she left the following day. CM denied any knowledge of the claimant being bullied or harassed and told the Tribunal she was never approached by the claimant in this regard. She only had knowledge of the commission issues and believed both AD and the claimant got on well.

### **Determination**

This was a claim for 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 prove that their resignation was justified in all the circumstances.

For an employer to be fixed with responsibility in a case of this nature it is essential that the employer is put on notice of any difficulties and given an opportunity to deal with them. For this reason it is important that any internal procedures that are set down are in fact followed.

The evidence adduced was that the complainant had made some complaints verbally to her deputy manager, (SP), but this was outside office hours and in the context of SP also sharing accommodation with her and KON. She also gave evidence that she tendered a letter of resignation to SP but the Tribunal accepts the evidence of the store manager that he had never been made aware of the tendering of this letter of resignation.

While there is no reason to doubt that some complaints were made by the claimant she admittedly did not follow the internal procedure when dissatisfied at the result of her verbal complaints to SP.

The Tribunal accepted the evidence of CM and NH that the claimant never raised the issue of bullying with them, and the Tribunal was not convinced that the claimant's complaints against AD were justified.

Having considered the evidence adduced by the claimant in her direct evidence and during cross-examination at the hearing the Tribunal finds that the conduct on the part of the

respondent was insufficient to entitle the claimant to consider herself dismissed. Thus the Tribunal finds that the claimant did not satisfy the burden she bore in relation to her claim for unfair dismissal.

The claimant's case is therefore dismissed by the Tribunal.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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