

## EMPLOYMENT APPEALS TRIBUNAL

Claim Of:  
Employee

Case No.  
UD1091/2006

against  
Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L  
Members: Mr. J. Reid  
Mr. G. Whyte

heard this claim at Dublin on 5th April 2007, 12th July 2007 and 13th July 2007

#### **Representation:**

Claimant: Mr. Wayne Anthony Lewis, Employment Advice & Representation Unit,  
DMG Business Centre, 12 Camden Row, Dublin 8

Respondent: Ms. Marguerite Bolger B.L. instructed by Mr. Ian O'Herlihy, Arthur O'Hagan,  
Solicitors, Charlemont Exchange, Charlemont Street, Dublin 2

#### **The determination of the Tribunal was as follows:**

##### Respondent's Case:

Giving evidence the respondent told the Tribunal he is a Parish Priest. The claimant worked for his predecessor before commencing employment with him. At the beginning of the claimant's employment everything was fine but in or around one year later things became uncomfortable. The respondent received a number of gifts from the claimant including a key ring that the respondent felt was inappropriate due to what it depicted. The respondent confirmed he had received a number of cards, letters and gifts from the claimant. On a number of occasions he asked the claimant to cease giving him gifts but he continued to receive them. He did accept the gifts, as he did not want to embarrass the claimant. The respondent became very alarmed at the content of the cards he received.

In May 2005 the claimant made a Bon Voyage card for him before his impending trip to Israel. The claimant revealed in the card that she loved him. The respondent was amazed and shocked at a note he also received from the claimant revealing her love for him. The respondent told the claimant he respected such feelings but could not reciprocate them.

The claimant tendered her resignation by letter dated the 20 May 2005. The respondent told the claimant he was not accepting her resignation and he would review the situation on his return

from Israel. He also discussed boundaries with the claimant and that he wanted no further gifts from her.

During the period of time he was in Israel the claimant contacted him three times about non-urgent matters, despite the fact that he had organised cover in his absence. When he returned to Ireland there was a Welcome Home card and presents in his house from the claimant.

He had provided her with keys to the house in case there was an emergency while he was abroad. The respondent told the claimant it was inappropriate for her to be in his home.

In the following months the claimant attempted to alienate the respondent from other female parish members. The claimant was on annual leave in September 2005. They met before the claimant was due to return to work. The meeting was at the claimant's request for a re-evaluation meeting. The claimant repeated that she loved the respondent.

The claimant became hysterical and stormed out of the parish centre. Before she left the premises he asked her to return the keys she had for parish premises. Letter dated 26 September 2005 followed this meeting. It stated, *"It is therefore with regret that I am accepting your resignation, as I believe the situation has become untenable. I am therefore, confirming in writing, having stated verbally to you at our meeting on Friday the 19<sup>th</sup> September, that I am accepting reluctantly, your resignation."*

A number of days later an incident occurred between the respondent and the claimant. The claimant entered the parish centre, in spite of an instruction given to her, that it was inappropriate for her to do so without a prior appointment and agreement. The respondent told the claimant on this occasion that she was suspended and this was outlined to her in letter dated 30 September 2005 in which it is stated, *"You were also informed verbally that you were suspended from your position as Parish Secretary forthwith due to your inappropriate behaviour and pending the outcome of our meeting."* The respondent also asked the claimant to attend a meeting on 4 October 2005. The claimant failed to attend for this meeting. The respondent subsequently sent letter dated 4 October 2005 to the claimant, in which it was stated,

*"At a meeting requested by you in the Parish office in early May you declared to me that for almost three years that you loved me. At that meeting I told you that whilst I respected your disclosure that I could not reciprocate these feelings in any way. I expressed that for some time I had been concerned about the number of gifts, presents and cards that you gave me. Furthermore I did state and made it quite clear that the cards were inappropriate and that I was concerned and surprised at the contents therein. I advised you that I would need time to reflect on what you said, that I had to seek advice on how to deal with this matter."*

The letter further stated, *"I have now had time to reflect on the situation and I believe that, in view of our most recent discussion, the correct course of action is for me to allow you to withdraw your resignation and I am offering you that option. I do, however have serious concerns."*

*"I have come to the conclusion that, before coming to my final decision as to whether because of your conduct, your position as Parish Secretary is still tenable, it is imperative that I satisfy myself that, going forward, there is going to be a proper employment relationship between us. As I have explained to you, I have serious concerns, as to whether you are going to be capable of relating to me in a proper manner. With these concerns in mind I have decided that it is necessary to ask you, at no expense to you, to attend for a psychological assessment."*

The claimant agreed to an evaluation and was suspended on pay pending the evaluation in December 2005. When the psychiatrist's report was produced the claimant was given a period of time to submit her own reports if she wished. The claimant wrote a letter dated the 26 February 2006 to the respondent. In the letter the claimant requested to recommence work on the 6 March 2006, with various medical reports to follow. The respondent's representatives wrote to the claimant and her representatives, stating they had until the 3 May 2006 to submit whatever reports they wished, in response to the psychiatrist's report.

The respondent terminated the claimant's employment, on grounds of incapacity, by letter dated 19 June 2006. The claimant's minimum notice entitlement was paid.

The Tribunal also heard evidence from the respondent about an issue the claimant had with an individual at the parish centre. The respondent asked the claimant if she wished to make a formal complaint but she did not. The respondent spoke to the individual about the matter.

During cross-examination the respondent stated that when the claimant tendered her resignation he did not accept it as he thought some space while he was in Israel might help the situation.

The respondent stated that in the absence of a second medical report from the claimant he had taken the decision to dismiss the claimant as he had allowed the claimant and her representatives six months to submit reports. He made a decision to dismiss the claimant on grounds of incapacity based on the medical report from the psychiatrist.

The respondent stated that the reason the claimant's P-45 was dated 31 January 2006 was because he had ceased paying the claimant at this time. He did not terminate the claimant's employment until 19 June 2006.

Answering questions from the Tribunal the respondent stated that he had informed the claimant by letter on the 18 January 2006 that he was ceasing to pay her.

A forensic psychiatrist gave evidence to the Tribunal. He evaluated the claimant following a request from the respondent and his representatives. He met with the respondent on the 28 November 2005 and with the claimant on the 5 December 2005 when she was on suspension. The psychiatrist stated that, in keeping with best international practice he requests background information before conducting an evaluation.

When he met the respondent on the 28 November 2005, the respondent outlined to him the difficulties he was experiencing and he stated that the claimant's inappropriate behaviour had continued to escalate. The respondent showed the psychiatrist various cards and messages that the claimant had given him. He showed the psychiatrist a Valentine's card, dated February 2005, in which the respondent is referred to as the object of the claimant's affection. The respondent told the psychiatrist that towards the end of November 2005 the claimant adopted a more aggressive stance and had on occasion refused to leave the parish office. The respondent also said that the claimant's underlying tone had changed from friendly to covertly threatening.

The respondent also told the psychiatrist in written communication, that in May 2005 the claimant requested a meeting with him to inform him that she had been in love with him for the past three years. The respondent told the claimant while he respected such feelings, he could not reciprocate them. Following a discussion, the claimant became angry and on the 20 May 2005 she tendered her resignation as Parish Secretary.

The psychiatrist met the claimant on 5 December 2005. He explained the “ground rules” of the evaluation to the claimant. He made her aware that his report would be sent to the respondent’s representatives. The psychiatrist’s report was read into evidence. The report consists of three components, a face-to-face interview, background information and information from the employer.

Section nine of the report relates to the claimant’s account of circumstances. The psychiatrist asked the claimant about the cards she had given the respondent. The claimant told him that in May 2005 the respondent was going to Israel. She had a Valentine’s card at home. The claimant removed the Valentine symbols and converted it to a Bon Voyage card. The claimant acknowledged the words “I love you” were on the card but insisted her comments “were not meant in a sexual way”. The claimant told the psychiatrist that when she wrote that she “wanted it out there”, meaning that she respected and cared for the respondent. The claimant acknowledged she had forwarded Christmas and birthday cards to the respondent. She viewed the cards as innocuous and believed they reflected a good relationship with her employer. The psychiatrist asked the claimant about a specific card and the legend written on the inside. The claimant did not see anything inappropriate with this card.

In his report the psychiatrist noted that the claimant was appalled when he suggested therapeutic options to her. She expressed disbelief to the psychiatrist when the possibility of medication or treatment was suggested to her. The claimant told the psychiatrist that if the respondent had not accepted her gifts, she would have got the message. The claimant stated that she would not be giving the respondent any further gifts since the respondent had told her not to. This was a crucial point for the psychiatrist in reaching his diagnosis, as it was his understanding that in or around that time, the claimant had provided gifts to the respondent. The psychiatrist believes the claimant lacks the capacity to distance herself from her preoccupation.

In his opinion the claimant’s clinical presentation is consistent with a diagnosis of Morbid Infatuation, which is a variant of Erotomania. The claimant demonstrated a persistent pursuit of the object of her attention (the respondent) with gradually escalating intrusiveness. The psychiatrist’s view was that the claimant’s current condition would prevent her from carrying out her occupation on either a full-time or part-time basis until she had appropriate therapy for her condition. His view of the claimant’s incapacity to work for the respondent remains unchanged to date and he believes that without treatment the claimant’s illness will continue to escalate.

The psychiatrist stated that an assessment of the claimant by a senior psychologist from the Health Service Executive was flawed, in his opinion, as it consisted only of a face-to face interview. The psychologist did not meet with the respondent.

During cross-examination the psychiatrist stated that he had met the respondent for over an hour and taken notes of what was said to him. The psychiatrist rejected that he had colluded with the respondent to fabricate a diagnosis of erotomania. He stated that he had carried out the evaluation of the claimant to a high standard. The psychiatrist confirmed that he had not consulted the claimant’s general practitioner; in hindsight, he stated, it might have been better if he had.

### Claimant's Case:

The claimant commenced employment as Parish Secretary in August 2001. She often gave her employer gifts at Christmas and on his birthday. In late 2002 her employer retired and she commenced employment with the respondent. As was her habit with her previous employer the claimant bought gifts for the respondent.

Before the respondent's return from Israel there was a suggestion of a welcome home party. When this did not transpire the claimant decided to give the respondent a Welcome Home card and present. A number of days later the respondent thanked her for these items. The respondent had brought her a gift from Israel. The first gift he gave her was from his trip to Lourdes in September 2004. Throughout the course of her employment the claimant gave the respondent a number of gifts at different times. The items were often free gifts from a stationary company. The claimant did not have a romantic agenda. It was a strictly professional relationship. The claimant appreciated in a pastoral way, the support and kindness the respondent had given her during an emotional time.

The claimant tendered her resignation on the 20 May 2005 because she believed the respondent had broken a confidence about her and her personal life to another parishioner. The claimant was very upset by this. She approached the respondent and he admitted he had told the parishioner in confidence. The claimant felt she could not speak to her employer in a pastoral capacity. However, this matter was resolved between them, her resignation was put behind them and the claimant continued in her employment.

The claimant was on annual leave at the start of September 2005. Throughout the course of her annual leave the claimant attended for a parish meeting. She received a "frosty" reception from the respondent.

On Friday, 16 September 2005 the claimant met the respondent at her request, as she wanted to clear the air before her return to work on Monday, 19 September 2005. The respondent told the claimant at the meeting that he had decided to accept the resignation she had given him on the 20 May 2005. The claimant felt "totally gutted and in shock." The claimant reminded the respondent that she had been working for four months since then and that they had sorted the matter out in May 2005. When she was asked to return the keys of the parish premises, she felt like a criminal leaving the building.

A number of days after the claimant was dismissed, she returned to the parish centre to collect the rest of her personal belongings. The respondent told her she needed an appointment and he tried to prevent her from entering the premises. When the claimant finally gained entry, the respondent told her she was suspended. The claimant asked how could she be suspended, when he had already dismissed her. The claimant subsequently received letter dated 30 September 2005, informing her she was suspended.

The claimant then received letter dated 4 October 2005 from the respondent. In this letter the claimant was asked to attend for a psychological assessment in order for the respondent to consider a return to work for the claimant. The claimant agreed to attend for an assessment with a psychologist. The respondent briefed the psychologist who then decided the claimant should be evaluated by a psychiatrist. The claimant was suspended with pay pending the evaluation.

The claimant was not informed prior to her evaluation with the psychiatrist that the respondent had briefed him. If the claimant had known this, she would have requested an impartial assessment. Throughout the course of the evaluation the claimant noticed that the psychiatrist repeated one question: did she think the respondent was secretly in love with her? The claimant answered "absolutely not." The psychiatrist asked the claimant would she take medication and have in-hospital treatment to return to work. This left the claimant in shock. The psychiatrist asked the claimant if he could check her medical records with her general practitioner. The claimant agreed to this but the psychiatrist did not contact her general practitioner before he wrote his report.

When she received a copy of the psychiatrist's report she attended another psychiatrist and a senior psychologist with the Health Service Executive. The claimant stated that neither found she suffered with erotomania. There is nothing in her medical history to support the findings of the psychiatrist. The claimant believes her employer did not explore all the options open to him. The claimant does not feel that the respondent acted reasonably or took into account the findings of her medical team. The claimant was not paid in February 2006.

The Tribunal also heard from the claimant about a complaint she had made in relation to an individual at the parish centre.

During cross-examination the claimant stated that she thought some of the cards she had given the respondent were inappropriate but none of the gifts were inappropriate. In relation to the Valentine cards that she had given the respondent, the claimant stated that at the time she thought they were a silly gesture. She did not think the respondent would read anything into them. The claimant accepted that they might have made the respondent feel uncomfortable but he did not tell her that at the time of receiving them.

The claimant had given her permission for the psychiatrist to access her medical records but this was not done. The claimant felt that the psychiatrist was not entitled to draw conclusions without considering everything.

Giving evidence a senior clinical psychologist with the Health Service Executive, told the Tribunal that the claimant was referred to her in February 2006, following alleged inappropriate behaviour towards her employer. The psychologist was asked to carry out a personality assessment on the claimant.

The psychologist told the Tribunal that she tends not to read the file on a person before meeting them, so she can gain a full sense of the person's point of view when she meets them. A copy of the psychiatrist's report was provided to her and she had copies of the cards. The psychologist first met the claimant on the 5 April 2006. The claimant's personality assessment was carried out on the 11 April 2006. The psychologist scored this assessment before her final meeting with the claimant on the 25 April 2006. The claimant was suspended without pay at this time but had been suspended with pay prior to this.

The psychologist stated that the personality assessment inventory is designed with a number of measures built into the test. The measures ensure internal consistency through four different factors, which ensure a person, is not projecting him or herself as what they want. The claimant's profile was deemed valid and there were no items on her profile, which were significantly elevated. The claimant did not obtain significance on any of the subscales, which would indicate someone who was not suffering from any of the psychopathologies tested.

The psychologist questioned the claimant about the content of the cards and gifts she had given to the respondent. The claimant admitted that the cards and gifts were a bit silly and that she was stupid to have given them to her employer. The claimant described her relationship with the respondent as warm and jovial. The claimant went through the list of cards and gifts and explained what her point of view was at the time of giving them.

The claimant told the psychologist that she had tendered her resignation in May 2005 but the respondent convinced her to remain in his employment. It was inconsistent with erotomania that the claimant was willing to leave the employment of the respondent. The psychologist also stated that if the claimant were suffering with erotomania, it would be very difficult for her to be in close proximity to the object of her infatuation. If the claimant suffered with erotomania she could work in a similar position but not in close proximity to the person she was infatuated with.

From her contact with the claimant the psychologist stated there was no concrete or defining evidence of the claimant having erotomania. The psychologist did acknowledge that it is difficult to diagnose erotomania. The psychologist did not interview the respondent.

Erotomania can be defined as a delusional disorder whereby a person believes himself or herself to be in love with an individual. The claimant gave no indication to the psychologist that she was in love with the respondent. There was no concrete evidence that the claimant was suffering with a delusional disorder. In her opinion, the psychologist saw no convincing evidence that would lead her to agree with the diagnosis of erotomania as she felt that quite a bit of the evidence was hearsay. The psychologist felt that situations and circumstances might have been misinterpreted which resulted in an unfortunate and difficult situation. The psychologist was not in a position to make a diagnosis either way but she did complete an overall psychiatric assessment.

During cross-examination the psychologist stated that she did not meet the respondent because she was asked to carry out a personality assessment on the claimant. Also, she knew both accounts would conflict. The psychologist did feel that she needed to meet the respondent to hear something conflicting and prejudicial.

The psychologist stated that when she assessed the claimant she was looking for psychological trends not evidence of morbid infatuation specifically. She stated that erotomania is a very rare condition and is very difficult to diagnose.

### **Determination:**

The Tribunal heard the evidence in this case over a period of two days. An application was made to the Tribunal to disqualify itself on the grounds of religious bias. The Tribunal having carefully considered the argument that the religion of the members of the Tribunal would render them incapable of issuing a fair determination was rejected as being without foundation.

Medical evidence was given to the Tribunal by a forensic psychiatrist in which he gave his diagnosis of the claimant as having erotomania. Evidence was given by a psychologist who stated she did not believe the claimant was suffering from a delusional disorder. The Tribunal considered that the actions of the claimant were unusual but that it would not be necessary for the Tribunal to decide whether the claimant was suffering from a disorder.

Recognising the unusual circumstances of the case the Tribunal find that the procedure, used by the respondent to dismiss the claimant was not in accordance with the Code of Practice laid down for disciplinary procedures in accordance with the Industrial Relations Acts. The claimant tendered her resignation in May 2005 but the employer instead of dealing with it at the time believed that he was entitled to retain it and act upon it at a later date of his choosing. This he purported to do in September 2005. At a meeting on the 16 September 2005 he told the claimant he was accepting her resignation. Some days later he changed this to suspension without pay. A short time after this he changed the suspension from without pay to with pay. In January 2006 he stopped paying the claimant. In June 2006 he dismissed her. This, in the opinion of the Tribunal was an unfair procedure.

The claimant by giving gifts to her employer could be said to have acted reasonably if they were taken in isolation but taken together were inappropriate. When the above is combined with the inappropriate postcards and letters and the claimant's other actions during the course of her employment, they constitute grounds for her dismissal. A person in the position of the respondent must be allowed to fulfil his duties within the parameters of the office that he holds. The claimant must have known of these parameters, which are essential for a clergyman. The respondent has to be above reproach and must be allowed to be seen to be above reproach.

If the members of his church were aware of the claimant's actions and he had made no protest and condoned them, this may have lead to a scandal. It is impossible to decide this case without taking into account the ethos of the respondent's religion and the guidelines for clergymen in that religion. As a member of the respondent's religion, the claimant knew of this ethos. The claimant totally disregarded this ethos in her actions. Her position as Parish Secretary was tenable only if she exercised sound judgement in these matters. This she failed to do.

The Tribunal find that the claimant acted in a manner that justified dismissal but that dismissal was procedurally unfair. The Tribunal award the claimant the sum of €1,560.00 (being the equivalent of four weeks' pay), as the minimum award allowed under the Unfair Dismissal Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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