

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

3 Employees

CASE NO.

UD922/2006

UD923/2006

UD921/2006

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mahon B.L.

Members: Mr. J. Hennessy
Mr. G. Whyte

heard this claim at Carlow on 9th May and 9th and 10th October 2007

Representation:

Claimants: Ms. Fiona Pekaar B L instructed by Mr. Robert Maher, Sean Costello & Company, Solicitors, Haliday House, 32 Arran Quay, Dublin 7

Respondent: Mr. David Coleman, IBEC, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

The Tribunal heard that the dismissals were in dispute and it was agreed that the three claims be listed/heard together.

Claimants' Cases:

Claimant A commenced work on the 8 November 2004 for the respondent in February 2000. The Braun factory in Carlow is one of the respondent's clients and the claimant was based there. The claimant was planning to take a holiday starting on the 18 August 2006 and she informed her supervisor of this in January 2006. Claimant A was aware of the respondent's holiday policy, as it had been brought to the employees' attention. Section 10.4 of the Statement of Terms and Conditions of Employment for the respondent states:

“If the location/unit where you work shuts down for a period the Company reserves the right to request you to use your annual holiday entitlement (or any remaining part thereof) during such period.”

The claimant knew her holiday plans fell outside of the shutdown period but thought there would not be a problem with the holidays as she always assisted the respondent when needed. Her supervisor asked her to talk to the site services manager about the holidays. When Claimant A spoke to the site services manager about the holidays she was provided with a holiday application form to complete.

Some time after this the claimant was asked to meet with the site services manager. The site services manager told Claimant A her application for holidays in August 2006 was refused. The claimant offered to work during the shutdown period instead but was told that staff had already been scheduled for that period. Some of the claimant’s colleagues offered to cover her shifts so that she could go on holidays but the manager did not accept this. The site services manager told the claimant that if she pursued her request for holidays the result could be disciplinary action.

Following this meeting the claimant received a letter from the site services manager outlining the above and requesting that the claimant confirm in writing by February 14th 2006 that she would comply with the procedures. The claimant responded in writing stating that she would adhere to the holiday policy.

Claimant A stated that from January 2006 onwards her supervisor and her team leader started to “hassle” her. When the supervisor was absent from site the team leader carried out his role. From February 2006 onwards the claimant was treated in the following manner. Sets of keys and her payslips were thrown at her. Claimant A and her colleagues had worksheets to complete. When Claimant A retrieved the worksheets there was already ticked boxes on the sheet. These sheets had to be submitted to the office at the end of each month. Claimant A believed that the team leader was marking the sheets as though the cleaning had not been done to a high enough standard.

Sometime after the 14 February 2006 the claimant spoke to the site services manager. The manager stated she would speak to the team leader about the matter. Claimant A did not know whether site services had spoken to the team leader but the team leader’s treatment of the claimant continued.

Claimant A felt her own manager had not been much help so she spoke with the account manager to whom her manager reported. On the 22 February 2006 a meeting was held. The claimant, the site services manager and the account manager were present. The claimant outlined what had been happening. The account manager and the site services manager told the claimant that they would speak to the team leader about the matter. Another meeting was held that evening with the site services manager, the account manager, the team leader and the three claimants present.

Claimant A was not impressed with this meeting, as she believed that a lot of lies were said at it. She felt as if she was getting something “like a slap on the wrist” from the account manager who voiced his dissatisfaction with having to be present at the meeting.

Claimant A wanted to know why a member of the team was treating her “as if she were dirt”. The team leader grunted at her rather than saying hello if he passed her. There was also the matter of the worksheets being marked. Claimant A did not feel she had been given an opportunity to air her grievance. The claimant asked the team leader why he was ignoring her and he gave her a childish

response to her question.

The claimant told the site services manager that the team leader was not speaking to her and she was told that the managers could not make the team leader speak to her. The claimant recalled an incident when the team leader threw keys at her and they hit the legs of one of the Braun employees who told the team leader he should have handed the keys to the claimant. Another time the team leader entered the area where the claimant was working and told her she could only have a fifteen-minute break. Claimant A had already clarified with the site services manager that she could have a thirty-minute break.

The claimant wrote a letter of resignation on the 10 March 2006. She worked one week's notice. During this time she was not contacted any further about the meeting on the 22 February 2006. The site services manager conducted the claimant's exit interview on the 15 March 2006. The manager completed the form and the claimant signed it. The form indicated that the claimant was leaving due to "*dissatisfaction*". In the interviewer's comments it had been noted that the claimant was leaving due to the treatment of her by the supervisor and the team leader and the way that management had dealt with the matter.

The claimant asked the site services manager for a copy of her exit interview. When the claimant returned to the manager's office to collect it she overheard the site services manager say to the team leader that he was to "keep his head down, the girls will be gone today." The claimant was escorted off the premises on her last day.

Claimant A subsequently received a letter from the account manager dated the 22 March 2006. The account manager asked the claimant to contact him to arrange a meeting. A number of letters between the account manager and the claimant were opened to the Tribunal.

As a result of these letters Claimant A telephoned the account manager on the 13 April 2006 and told him that she could not attend a meeting that had been arranged. Claimant A told him that she did not feel comfortable meeting and that she did not have a witness available to attend with her as it was Good Friday. The account manager told the claimant that she did not need a witness, as she was no longer working for the company. The claimant told him she would prefer to have the meeting on a different day. The claimant has not received any contact about a meeting since then. Claimant A has contacted the account manager twice about the meeting but no meeting has taken place. The claimant stated that she had not received a letter from the account manager dated the 28 May 2006. Her attempts to contact him preceded this letter. Claimant A stated that she followed the grievance procedure and exhausted all avenues open to her.

(Cross-examination) Claimant A acknowledged she signed a contract of employment with the respondent that included the company's policy on staff leave, and the grievance procedure. By the end of January 2006 the witness knew of Braun's shutdown periods. At that time she was involved in booking a holiday for August of that year. The site service manager responsible for Braun's operations formally objected to the holiday application and invited the witness to comply with company procedure on leave. Before adhering to that instruction on 14 February the claimant said she was obliged to call at the site manager's office and was subjected to threats to her employment. She accepted that her letter dated 14 February 2006 to the site supervisor ended the issue of her holiday application.

From early February 2006 onwards the claimant felt that her immediate supervisor and team leader began to bully and harass her. That took the form of ignoring her and treating her with general

indifference. The site service manager became aware of those complaints and arranged a meeting with all concerned on 22 February. The purpose of the first meeting that day with the accounts manager and the site service manager was to seek information on the reasons behind the behaviour of those two men. The claimant did not put her grievances in writing as she felt uncomfortable doing that “and needed her job”. While she agreed formally to recommence communications with the team leader and supervisor the issue of the ticked boxes continued. It became “unbearable” to work with those two men and therefore she took the decision to resign. Prior to that the witness told the site service manager of her concerns but was losing confidence in her to resolve the matter. Claimant A said she was not asked to reconsider her decision by the site service manager.

Claimant B who is a sister of claimant A commenced work with the respondent in September 2002. She was aware of the company’s policy on leave with regard to their clients’ shutdown periods. However she had never had a shutdown experience since starting at the respondent in September 2002 but accepted that there probably was a reduction in Braun’s employee input at certain times. The witness knew of claimant A’s leave application at an early stage and “had a few words” with their common supervisor about this. She suggested among other things that both she and a colleague could undertake to cover claimant A’s duties while she took leave. The site manager was unable to sanction that leave following her reported contact with the human resources section about that application. When the witness contacted the same section she was told that they knew nothing of that situation and application.

In the meanwhile her sister was reportedly receiving continuing harassment and threats from the site manager over her holiday application. The site manager denied that allegation and stated that she was not going to dismiss claimant A. The witness said that her grievances with the respondent then started. She felt that their supervisor could have done more to support her sister’s application. She also noted that their team leader started to behave “badly” towards the claimants as he commenced ticking of boxes against their work. In addition details of the claimants’ discussions with the respondent’s site manager over that holiday application were repeated back to them by people who were not directly involved in that issue. Eventually the witness and claimant C approached the site manager and outlined their concerns to her about general harassment from their team leader.

The witness who was also a shop steward listed three grievances raised at the meeting on 22 February. These were the ticking of boxes, the team leader’s behaviour and lack of communication, and his allegations about the nature and content of a phone call. The site manager instructed him to cease ticking the boxes but he still continued to do so subsequent to that meeting. She also maintained that he lied at that meeting insisting that no such phone call took place between her and the team leader. None of those issues were resolved for the claimant at that meeting. Following that meeting the general intimidation from the team leader continued and the claimant went to the site manager’s office “on numerous occasions” to complain about that treatment. She soon concluded that those discussions were compromised and felt she could no longer talk to anyone at management level in confidence. By the middle of March 2006 she “had enough” and handed in her notice.

Claimant C commenced employment as a cleaner in February 2000. She worked approximately fifteen hours per week and had had “no trouble” with the respondent up to the end of January 2006. That situation adversely changed early the following month as her team leader’s attitude and behaviour became less friendly and accommodating. The witness gave examples of this development where the team leader either snubbed her or treated her with disdain. She communicated her misgivings towards him to her supervisor and on 22 February directly to him.

Despite his assurance that he would stop ticking boxes such a practice continued until she again approached the site manager about that issue. The claimant also accused the team leader of lying at that meeting. She noted that the account manager indicated his distaste for that meeting and she believed that the meeting did not end on a positive note.

The witness continued to feel intimidated by the team leader's behaviour and brought her concerns to the site manager on a number of occasions. She formed the impression that the site manager in turn repeated her concerns to others and concluded she could not have a private discussion with her. The claimant had lost trust and confidence in management to deal with her grievances. She had no knowledge of the company hierarchy and resigned her position on 16 March 2006.

Claimant C acknowledged receiving a copy of the company's bullying and harassment policy prior to meeting the team leader and her supervisor on 22 February. She told the Tribunal that management did not advise her of the next steps open to her should she be dissatisfied with the outcome of that meeting. Following her resignation and exit interview the claimant confirmed her receipt of letters from the account manager regarding her resignation. Along with the other claimants the witness denied receiving correspondence from him dated 28 May 2006.

Respondent's Case

The Tribunal was told that the claimants' supervisor who managed them on a day-to-day basis "got on fine well with the girls" up to the time certain issues "blew up" when one of them applied for leave outside the shutdown periods. The witness felt that a particular claimant was "winding him up" over that application and he consequently referred that application to the site manager. By 22 February 2006 the witness felt there was a communication breakdown between the team leader and the claimants as they continued to ignore him. That issue was addressed at meetings on that day and he confirmed that the issue relating to the box ticking practice was resolved.

The claimants' team leader described his relationship with them as great up to 1 February 2006. His role was to check the "girls" work. He explained that his ticking of boxes indicated that something was wrong with the functioning and operating of a device as distinct from staff failure to properly attend to an allotted task. He confirmed that he apologised to the claimants about their annoyance over those ticks and told them it was not done on purpose. Such a practice was discontinued from 22 February onwards. One reason for his increased ticking of those boxes was in lieu of verbally having to communicate with the claimants. He was "shocked" to hear of bullying and harassment allegations against him by the claimants and denied throwing payslips or keys at them.

The witness did not complain of the claimants' treatment of him as he felt the situation "would blow over". According to the witness the claimants had "blanked" him and while he did not know the exact reason for that he speculated it had something to do with claimant A's application for leave. He commented that "it was no skin off his nose" when she took her holidays. His attitude was that since the claimants ignored him then he in turn would ignore them. At the conclusion of their meeting on 22 February the witness still had a problem with claimant C as she continued to deny having a relevant phone call with him prior to that meeting. She became abusive and later declined to meet him with a view to settling outstanding issues between them. His approach was that he had to work with her subsequent to that meeting and wished to do so in a harmonious way. The witness expressed surprise at learning of the claimants' resignation and felt the "coolness" started when the holiday issue arose.

The site service manager for Carlow (Braun's) and Newbridge outlined the company's policies and procedures for staff leave. Section 10.4 of all three claimants' terms and conditions of employment stated: "If the location/unit where you work shuts down for a period the Company reserves the right to request you to use your annual holiday entitlement (or any remaining part thereof) during such period." All three claimants signed contracts with the respondent which included that clause. The witness who commenced her assignment with Braun's in early 2006 met with most of the respondent's staff there and informed them when Braun's shut down periods were due for 2006. She also posted those dates on a notice board. Each relevant employee was obliged to fill in a holiday request form and submit it to his or her line manager. Those managers in turn either approved or rejected that leave application.

The witness became aware in early February 2006 that one of the three claimants' was making holiday plans for dates contrary to the shut down periods at Braun's where she worked. When the witness spoke to the claimant she confirmed that this was the case and the worst the company could do "was to sack her". The site supervisor proceeded to contact the respondent's human resource department and also wrote to that particular claimant stating that failure to adhere to company procedure on leave would result in serious disciplinary action. That claimant replied in writing on 14 February agreeing to abide by that procedure. The witness added that the claimant was not treated any differently from other employees on this issue. Alternative arrangements and other suggestions were considered to allow the claimant to take her leave when she desired but these were ultimately rejected on budget and other grounds.

By the middle of February 2006 the witness heard complaints from the claimants regarding their supervisor and team leader. She asked the claimants to put their grievances in writing citing examples of the alleged bullying and harassment from those two men. The witness also spoke to the account manager and a meeting was arranged for 22 February. A series of meetings labelled as informal by the witness took place that day involving the claimants, the witness, the accounts manager and the claimants' supervisors. At the first meeting the claimants complained of the supervisors behaviour towards them and how one of them was ticking boxes against their workload. A tick of a particular box was considered a negative mark against a staff member. The witness and the account manager then met the two men in question and put the complaints to them. All participants took part in the third meeting. There the team leader apologised for ticking the boxes and that issue was resolved. The holiday issue was not raised. However the meeting ended with heated exchanges between one of the claimants and the team leader over an alleged offensive phone conversation between them prior to that meeting.

The witness said that she took the claimants' complaints seriously "from day one" and attempted to resolve all issues put to her. She explained to them on more than one occasion to write down their grievances. The company was never directly furnished with any formal complaints from the claimants prior to their departure from the company in March 2006. Following their resignations that month the respondent was supplied with typed statements extracted from handwritten letters of resignation handed in by the claimants to the management of Braun's. The witness conducted exit interviews with all claimants on 15/16 March where all three cited mistreatment and lack of management action in resolving their grievances as reasons for their resignations. The site manager pleaded with the claimants to reconsider their decision to resign, as she did not want them to leave. She denied breaking confidences in her treatment of their complaints and comments to other staff members.

Prior to meeting all the relevant parties on 22 February 2006 the account manager was informed by

the claimants' site manager that certain issues had arisen between herself, the three claimants and their supervisor and team leader. Those issues centred around alleged bullying and harassment of the claimants. The witness was also aware of claimant A's recent application for leave and how that concluded. That application and its aftermath contributed to "lots of gossip and talk" among the claimants and the wider workforce at Braun's. The witness attempted to use an informal route to discuss and resolve these ongoing issues and therefore facilitated meetings with all concerned on 22 February.

The account manager, the site manager and the three claimants met that morning. The claimants were asked to air their grievances and were told they would be later put to their supervisor and team leader. The claimants spoke of being ignored and complained of the new and unwelcome practice of ticking boxes in relation to their work. The two managers then put the claimants' grievances to the two men in question. While the supervisor expressed surprise at the claimants' comments the team leader acknowledged he was ticking boxes and explained the reasons for that exercise. All the parties then assembled together that evening and the witness opened the floor for debate. At first he felt that the meeting was progressing well. The team leader had apologised for causing offence in ticking the boxes, and claimants A and B, the supervisor and the team leader seemed willing to make an effort to resolve issues between them. However as the tone, language, and accusations between the team leader and claimant C deteriorated the witness felt there was no other option but to terminate that meeting. During the course of that meeting the witness advised the claimants that they could use a formal route for their grievances if they were unhappy with the outcome of that meeting. He was aware of the significance of that meeting and did not give the impression that he did not want to be there.

The witness had no further direct contact with the claimants subsequent to that meeting and prior to their resignations some three weeks later. However, he asked the site manager to monitor the situation and was satisfied that she attempted to get the claimants to formally air their grievances. The witness eventually received written complaints via a third party from the claimants following their resignations. Upon examining their exit interview notes the account manager then wrote to the claimants on 22 March 2006 seeking a meeting with them to discuss and clarify the reasons for their decision to resign. Despite other attempts to set up such meetings by 16 June 2006 the witness then assumed they no longer wished to pursue the matter.

Determination

Members of the Tribunal carefully considered the detailed evidence adduced, statements put forward and documents submitted during the three-day hearing. The Tribunal heard that employee relations deteriorated during the period prior to the resignations. It was clearly put to the tribunal in evidence that the claimants' and colleagues concerned were good friends who fell out as a result of the issues involved. The Tribunal finds that the deterioration was in the nature of a potentially resolvable temporary workplace quarrel/feud. The resulting deterioration in staff relations and behaviour did not amount to, or come within the accepted definition of workplace intimidation, harassment or bullying. Members of the Tribunal particularly noted that the situation was aggravated by a lack in management procedures and implementation which fell short of the standard expected in the context of current industrial relations and modern human resource practice.

The Tribunal also took into consideration the claimants' failure to avail of the opportunity to:-(a) genuinely engage in a meaningful fashion with a view to resolving the issues, (b) to exhaust available procedures and (c) invoke trade union expertise available to them as union members. Having regard to all of the circumstances it is the unanimous determination of the Tribunal that the three claimants were not constructively dismissed. Therefore, the three claims under the Unfair

Dismissals Acts, 1977 to 2001, fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)