

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:****CASE NO.**

EMPLOYEE

UD856/10

- claimant

**Against**

EMPLOYER

- respondent

**under****UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr R. Murphy  
Mr M. O'Reilly

heard this claim at Dublin on 24th August 2011.

**Representation:**

Claimant: Ms Laurena Hughes, Kilroys, Solicitors, 69 Lower Leeson Street, Dublin 2

Respondent: Mr. Niall Beirne BL instructed by Ms. Siobhra Rush, Matheson Ormsby Prentice, Solicitors, 30 Herbert Street, Dublin 2

The determination of the Tribunal was as follows:-

**Claimant's Case:**

The claimant commenced employment in the role of Director of Education on 22<sup>nd</sup> October 2007. His role entailed nine key performance indicators all equally weighted.

He had a good relationship with the CEO, his manager and got on well with the Board of Management. He had been commended for the work he had done and received his salary increments together with bonuses. He enjoyed his position.

He had a weekly meeting with the CEO, GS. His quarterly reviews were carried out informally and he discussed any issues he had. An evaluation of his review was emailed to him following each review.

The claimant completely restructured the company's examination function. It was clear to him that

there had been issues with the preparation of the manuals previously carried out by an outside body. In early 2009 the claimant took responsibility for launching a series of manuals for the company. He sourced nine different authors to prepare the manuals. He trusted these authors. As the author of the taxation manuals was highly regarded and because of her expertise he saw no need to have these manuals technically proofed. He did not provide that author (DC) with a contract. He carried out the proofing of four manuals. In late September/October 2009 he became aware of certain numeric mistakes in both Taxation 1 and 2 manuals. It was well talked about in the office. Students had given their own feedback on the mistakes. He informed GS of these errors within days. He was also aware of rumblings in both the management accounting manual and the financial accounting manual.

In early October 2009 he spoke to AT, a tax lecturer and asked her to review the manuals. He took responsibility for these errors. In a meeting in October 2009 with GS he offered to apologise for the implications of what had happened and to discuss a recovery plan with both herself and AC, the President of the company but GS refused this request.

His third quarterly review meeting was due to be held in mid November but was postponed. The meeting took place on 7<sup>th</sup> December 2009. He expected the meeting to follow the same structure as his previous review meetings. He believed his key performance indicators had been met.

That meeting was held in another room and not in GS's office as they had been previously. It was a very charged meeting. He deemed the meeting to be a disciplinary one. GS had told him he created the problem concerning the manual errors and that she had lost his trust and that there was no going back on this. He asked her to clarify but this was ignored. He was not permitted to discuss the remaining key performance indicators. He could not recall if the budget had been discussed at that meeting. He told GS that he had let the respondent down by trusting the authors. He was left in no uncertain terms that his future in the company was gone. Nothing positive was discussed at that meeting and he never received an evaluation report afterwards. The claimant accepted he had handled both the Taxation 1 and 2 manuals badly and apologised. He did not get the Taxation manuals independently proofed.

He was not treated fairly but appallingly. He was trembling and upset. He felt bullied and traumatised. After that meeting he spoke to his wife and told her he believed the company wanted him to leave his job.

He returned that afternoon. Disciplinary procedures were not discussed with him.

He again discussed matters with his wife later that evening. He was very low and upset. The following morning, 8<sup>th</sup> December 2009 he met GS. He informed GS that he was resigning and that if there was a generous offer on the table he would accept it. He tendered his resignation and this was accepted. He was unequivocally told there was no going back on this and believed he had no choice but to resign. His dignity had been taken. He offered to work out his six-week notice period. GS agreed to pay him his six weeks notice and his termination date was 18<sup>th</sup> January 2010.

The company did not have a personnel manager. He raised the need for HR support. Each manager instead would manage HR and GS was his manager. He did not see the point in lodging a complaint, as it was very obvious that GS had a strong relationship with the president and the board of management.

Before he left the office on the afternoon of Tuesday, 8<sup>th</sup> December 2009 he spoke to managers and his fellow Director JOC and his team and informed him of his decision to resign his position.

## **Respondent's Case:**

The respondent is a leading professional body for accounting technicians in Ireland and has over 5,000 students and 80 providers.

GS is the Chief Executive and she employed the claimant.

On 28<sup>th</sup> November 2008 the claimant presented a draft educational strategy to the respondent's Board of Management. Problems were identified in relation to the quality of work provided by certain examiners and moderators and there was agreement that the claimant would source new examiners. The respondent agreed to launch a self produced manual for all eight subjects, which was carried out by the claimant and the respondent was led to believe that the authoring had already commenced. GS said that anything published needed technical proofing. The claimant had assured GS that it had been done. The claimant assured GS in his first review meeting in March 2009 that the timetable for delivery of all the manuals was mid July 2009 with independent proofing completed in early August. The independent proofing was to be carried out by another technical competent person. Not all key performance indicators were discussed at every review meeting. GS reviewed all key performance indicators in advance of each meeting. These meetings were always informal. She took notes at each meeting.

In October 2009 the claimant informed GS of problems with the tax manuals. The author and external proofer had missed these errors but that he had a solution. GS was extremely annoyed and there was no choice but to have them rewritten. GS said she had hoped that it was the last she would hear of them and the claimant assured her that all other manuals were fine.

On 5<sup>th</sup> November 2009 GS visited two colleges in Ennis. She had a very good relationship with these colleges. She had two separate meetings in the colleges and was asked what had happened with the manuals, they had not been proofed and she apologised and said the new manuals would be sent out free of charge. The college enquired about errors in other manuals. She assured the college they were fine. They were not. She was informed that there were errors in the management accounting manual as well as the financial accounting manual. Between the two meetings she left voice messages for the claimant. The claimant said that the management accounting manual had been sent in late by the author and thus there was no time for proofing.

On 9<sup>th</sup> November 2009 she met the claimant and went through each manual, who had written them and the issue of proofing. It became evident that her directions regarding the technical proofing had been ignored. DC said she was taking over the management of the operational issue. It was a really serious issue. The claimant asked her if she wanted his resignation and apologised.

GS wrote to the claimant the following day and outlined that she was extremely disappointed in the way the monitoring of the authors and the follow up on proofing of the manuals was handled. It was evident that the proofing was not in place throughout the process. She reminded the claimant that the rewriting of the manuals must be fully proofed before they go to print. The claimant acknowledged this letter in person. The following day JM, Business Development Manager emailed her following her visit to a college in Galway of students' complaints regarding the numerous errors in the manuals.

GS reviewed DC's contract and all other contracts. In the accompanying guidelines it was very clearly stated that the respondent took full responsibility for technical proofing.

GS opened the meeting on 7<sup>th</sup> December 2009 with pleasantries. This was the claimant's third review meeting. She enquired about the claimant's holidays and the welfare of his family. Firstly, the budget was discussed. She then asked him why full technical proofing had not occurred. GS said he had let both himself and his colleagues down and also the students. GS said she had to take advice on the matter. She was assertive during the course of the meeting but certainly not aggressive.

That afternoon the claimant asked to meet her. GS said she had not come to any decision. She said she had lost the claimant's trust. The claimant asked her if she wanted him to resign. She said it was his decision but that she was not asking for his resignation. He said he would discuss it with his wife, and if he were to resign what was the position of his six weeks notice. It was agreed that his salary would be paid until the end of February.

The following morning, 8<sup>th</sup> December 2009 the claimant informed her of his decision to resign and accept her kind offer that was on the table. She agreed that he could keep his mobile phone. The claimant looked relieved. He said he would drop in his credit card that afternoon. The claimant did not attend the official opening of the new premises that afternoon but instead informed the managers and his team of his resignation. The claimant said he wanted a job with less responsibility and to have more time for his family. They both shook hands.

The claimant was not fired. Had he not resigned his position GS would have invoked the respondent's disciplinary procedures. He was provided with a very favourable reference.

A tax consultant DC met the claimant in March 2009 and agreed to prepare tax manuals for the respondent. She was familiar with the syllabus and was given a contract. Her contract outlined that final proofing and technical proofing rested with the respondent.

In the course of the preparation of the manuals she required to meet two examiners and needed guidance. She never met the examiners. She e-mailed the claimant but received no replies.

Her drafts of the manuals were ready by 4<sup>th</sup> August and she sat with S in the respondent's office, and discussed typesetting and layout in one day. There was no technical discussion. She did what she could to the best of her ability. Her contract provided for a two-week period for changes to be made but this did not happen. In retrospect DC said she should not have remained silent on the matter.

JOC is Director Marketing and worked at the same level as the claimant.

On 19<sup>th</sup> November 2009 he visited a college in North Dublin. He was informed that there were obvious issues with the Taxation manuals. He subsequently met the second year class and was verbally assaulted. They were most annoyed with errors in several manuals. JOC apologised profusely.

In another college he visited students expressed dissatisfaction with the errors in the manuals.

The claimant informed him on the afternoon of 8<sup>th</sup> December 2009 that he had attended difficult meetings with GS, that he had decided to resign his position and that GS agreed to give him a reference.

**Determination:**

Having considered all the evidence adduced at the hearing the Tribunal is of the view that the claimant was not constructively dismissed. He made no attempt to activate the grievance procedure prior to handing in his resignation thus denying the employer the opportunity to address his issues.

His claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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