

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE – *claimant*

CASE NO.
UD1587/2011

against

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D Mac Carthy SC

Members: Mr C Lucey
Ms M Mulcahy

heard this claim at Dublin on 7th January 2013 and 18th June 2013

Representation:

Claimant(s): In person

Respondent(s):

The determination of the Tribunal was as follows:-

Claimant's Case:

This was a claim for alleged constructive dismissal. The claimant was employed as a full-time reservations sales agent for a car hire company. His employment commenced in January 2003. He requested to change to 30 hours per week over 4 days in September 2004. In August 2007 he requested to resume working for fulltime hours (37.5 hours over 5 days). He achieved a new role in May 2008 but due to company restructuring was ultimately returned to his original role of reservations sales agent in April 2009.

In February 2010, at his request, he again commenced working a 30 hour 4 day week. On 14/15/16 October 2010 he took three days sick leave for a stress related illness. On 19th October he complained to his team leader about the pressure he was feeling in his work. He provided a sick certificate citing stress related illness for the period 20th October – 20th November 2010.

The claimant returned to work on 24th November 2010 and on the same day gave his team leader a six page letter which stated that he wished to invoke the grievance procedure due to the

pressure he felt in carrying out his work. The claimant's grievances outlined in the letter included:

- excessive targets
- massive call volumes
- excessive call holding times
- insufficient number of staff on evening shifts
- insufficient operational planning
- under resourced
- pressure to make sales calls
- fielding calls from all aspects of the business due to restructuring
- fielding calls from angry customers
- customer service calls taking time from sales calls
- voice recognition system frustrating customers
- poor communication between branches and between branches and customers
- insufficient breaks considering the high call volumes and scrutiny of break times
- VDU screen based work leading to headaches
- Computer failure
- Excessive coaching sessions
- Unachievable expected call handling times
- Pressure to sell add-on items such as satellite navigation units
- Suffering from headaches, exhaustion, pain in side, breathing problems, swollen glands, tired eyes, a twitch, hair loss and sleeping difficulties
- Refusal to accept working simultaneously as a customer services agent and reservations agent
- Refusal to sign coaching forms setting confirmed targets
- Hard to use sales tracking sheets
- Poorly explained credit card policy & system procedures for customers
- Lack of stationary
- Expected to lie about the presence of a manager
- Poor customer service
- Computers crashing
- Problems with coupons

The claimant gave evidence that bad management, excessive coaching sessions, being micro-managed, insufficient breaks from the computer, excessive targets led to him developing work related stress. He felt that the company response was just a box ticking exercise and that they did not take a legitimate interest in his situation. He was referred to the occupational health nurse on his return from sick leave in November 2010 but she did not refer him to the doctor. No disciplinary process had been instigated against him, but he felt that things would go that way as he was not achieving targets.

Respondent's Case:

A meeting was held on 1st December 2010 with the claimant, his team leader and the department manager to discuss the claimant's grievances. On 11th January 2011 the HR Business Partner indicated that she would address the claimant's concerns under the formal grievance procedure. On 16th February 2011 the HR Business Partner held a meeting with the claimant and presented him with a written response to his grievance letter under 23 different headings. In the response she notes that she had so far spent 27 hours on the investigation. The response also included an offer to the claimant of a different role. On 28th February 2011 the claimant submitted a sick certificate to cover 28th February – 28th March 2011 citing work related stress. On 2nd March 2011 the claimant submitted his resignation letter.

A summary of the response to the claimant's grievance provided on 16th February 2011:

- **Breaks and monitoring of breaks:**
- Break times in accordance with legislation
- The claimant's supervisor reported that only if a trend arose of an employee taking in excess of the allotted break time would the matter be raised with them
- HR Business Partner committed to benchmarking the break periods against other departments and look at costs associated with changing break times.
- **Average Handling Time (AHT):**
- The claimant's AHT was higher than other agents and accordingly his coaching sessions focussed on this. The claimant was resistant to addressing this issue.
- **Excessive coaching sessions:**
- Agents usually receive four coaching sessions per month. Twice in 2010 the claimant had five coaching sessions in one month. On two occasions he had two coaching sessions in one week. The claimant was resistant to taking onboard advice given during these sessions and wanted to be left alone. HR Business Partner requested that the claimant give the coaching sessions a chance.
- **Targets:**
- Targets are necessary and allow employees to earn bonuses. Targets were adjusted in 2010 as a result of employee feedback.
- **Poor Shift Planning:**
- HR Business Partner consulted with Operations Forecasting and outlined the process used to create shift plans.
- **Lack of staff:**
- Same staff numbers in 2011 as in 2010 and 16 new staff starting in February and March 2011.
- **Customer complaints and multi-lines:**
- Customers sometimes choose a different option in order to get through to an agent quicker. This option cannot be removed.
- **Pressure to sign documents:**
- It is common practice to sign documents. Agreed that the claimant should have more time to study any document before signing.
- **Tracking forms:**

- Tracking forms currently required for business planning
- **IVR call system:**
- The call system is constantly monitored and improved.
- **Weekend managers saying not available or not doing call backs:**
- Not the policy of the company and to report this if happens.
- **Computer problems:**
- Being addressed. IT to sit with the claimant and address any of his issues.
- **System not logging stats:** Now resolved.
- **Payroll issues:** Complaints were historical. Any further issues to be reported to HR Business Partner.
- **Report conclusion:**
- In addition HR Business Partner reviewed calls by the claimant as requested. She found that the claimant was polite but did not use the script and was repetitive which resulted in the claimant not meeting the quality target. She was concerned that the claimant stated that he hated his job. The elements of his job were unlikely to change and therefore if he wished to look into a different role she would assist him. She promised to update the claimant on items she promised further review on.

Health issues:

The company provides a free GP service twice a week. The occupational health nurse is available four days per week. An occupational health GP visits every fortnight. Employees can make appointments with the GPs through their line manager or can visit the nurse during her office hours.

The claimant attended the occupational health nurse on his return to work in November 2010. She gave evidence that the claimant said that he was “busy but ok”. He was happy that his grievances were being looked into. His sick leave was for work related stress. The GP had associated his leg twitching with stress. The health nurse did not deem it necessary to refer the claimant onto the doctor. The claimant’s doctor had certified him fit to return. He was not on any medication and his GP had not referred him to anyone else. The claimant did not seek a further workstation assessment. He did not state there was a problem with his chair. Employees are encouraged to stand whilst taking calls. Breaks from the computer do not require leaving the desk and can mean just doing a different task.

She asked the claimant what he wanted and he responded that he wanted a longer AHT and less micromanaging. He told her that he did not like working there but it was not a good time to find work elsewhere.

The claimant did not appeal the outcome of the grievance procedure or ask for more time to consider the report. He resigned by email on 2nd March 2011 citing “work related stress” as the reason.

Determination:

Constructive dismissal is defined in section 1c(b) of the Unfair Dismissals Act, 1977, as follows:

b) the termination by the employee of his contract of employment with his employer, whether prior notice of the termination was or was not given to the employer, in circumstances in which, because of the conduct of the employer, the employee was or would have been entitled, or it was or would have been reasonable for the employee, to terminate the contract of employment without giving prior notice of the termination to the employer...

Most of the claimant's complaints were of a general nature relating to how he was managed rather than specific actions taken against him. Usually a constructive dismissal case is based on issues which personally affect the employee concerned. The Tribunal understands that there may be cases where constructive dismissal arises from the general conduct of an employer towards employees in general, but it is not the usual case, and in this case it does not appear that any of the other 800-900 employees took claims for constructive dismissal.

The claimant invoked the grievance procedure and raised a large number of issues as set out in the claimant's case outlined above. The respondent's HR Manager gave these complaints very detailed investigation and set out her findings in a lengthy report dated 16th February 2011. Of the 23 points raised by the claimant the HR Manager gave a positive response to 16 or 17 of those issues. The claimant did not respond and two weeks later resigned.

The Tribunal also addressed certain other complaints of a personal nature affecting the claimant's health. We are satisfied that the occupational health nurse employed by the respondent addressed these issues professionally.

The Tribunal is of the view that the respondent reacted fairly and thoroughly to address the claimant's concerns, and, in our view the conduct of the employer was not such as to ground a constructive dismissal. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007, is dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)