

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO.  
UD643/2007, MN508/2007

Against

Employer

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr P. Pierce  
Mr. P. Woods

heard this claim at Dublin on 27th November 2007 and 9<sup>th</sup> April 2008.

### **Representation:**

Claimant : Mr Stephen Boggs B L instructed by  
Gallagher & Company, Solicitors, 58 Ranelagh Village, Ranelagh, Dublin 6

Respondent: Mr. Eamonn McCoy, IBEC, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

### **Respondent's Case**

A senior employee at a well-known management consultancy organisation who had some expertise in the information technology business outlined the nature and character of a web site called Bebo. That site described by the witness as a social networking site which is very accessible to computer users and is predominantly used by younger people.

The events that led to the claimant's dismissal started in late March 2007 when a customer of the respondent, which was a retail store, contacted a member of staff and drew her attention to comments posted on that Bebo site allegedly by the claimant. The full comments read as follows:

*heya no I was in bits this morning getting sick! !dunno y!!!! tried ringin work from 7.30 but couldn't get through wit the phone bein broke and was rinin head office but no body was in. gotthrough 2 h.o. at about 9 and they transferd me down but no body answered so I rang Y and toldher 2 tell X (the manager in question), she rang me at 9.30 askin y iwasn't in and I told her the whole story and she called me a liar and said the phone never rang on the floor all*

*morning...headoffice even got back 2 meand said that no body was in and 2 ring back later!!! I f\*\*in hate thatc\*\*t. I'm gonna go in2 here 2 mro and show her all the times I rang in the morning. callin me a lierf\*\*kin cheek!!*

Those comments were in turn brought to the attention of the respondent's human resource manager on 3 April. That manager explained that the respondent had an official presence on that Bebo site. In addition the branch where the claimant worked had a separate but linked connection to the official site. That link was established by employees at that branch and operated independent of it. Upon looking at that link and reading some of the comments including the piece that caused offence to the customer the witness recognised the claimant's name among other staff as contributors to that connected site.

The human resource manger met with and spoke to the claimant that day. During the course of that meeting the claimant confirmed she wrote the comments in question. Those comments amounted to a less than flattering description about a manager at the branch where the claimant worked. However the respondent was not directly named in those comments. The witness did not accept the claimant's contention that those comments were a private matter as they were published on a site accessible to the general public. In treating the issue as a very serious matter the human resource manager suspended the claimant pending a disciplinary hearing. Up to that time the respondent had no disciplinary issues with the claimant.

A disciplinary meeting took place on 10 April 2007 attended by the witness, another employee, the claimant, and her representative. When asked for an explanation for her unwelcome comments posted on a particular site the claimant said she was having "a bad day" and was reacting to a false contention made by that particular manager. Following a review of that meeting and in consultation with others the witness viewed the claimant's behaviour as gross misconduct and accordingly dismissed her by way of a mobile call the next day. The witness also conveyed that news to the claimant by letter dated 13 April 2007. The witness judged that the necessary relationship between the respondent and the claimant had broken down.

The operations' manager stated he was neither involved nor aware of the claimant's dismissal at the time it took place. However prior to chairing an appeal hearing on this case on 21 May 2007 the witness read relevant notes on this case. He emphasised that the appeal was not a re-hearing of the case and added that the grounds of appeal were set out in the claimant's solicitor's letter forwarded to him. A transcript of the appeal hearing was submitted as evidence and following further subsequent consideration of the case the witness decided to uphold the original decision to dismiss the claimant. He formally communicated that decision to her by letter dated 22 May 2007. His main reason for upholding the original decision was that there were not sufficient grounds in the appeal to reverse or otherwise alter the dismissal.

The witness accepted he went through an exercise in considering an alternative to dismissal in the form of a possible transfer of the claimant to another outlet or section of the respondent. He said that no such vacancies existed at the time and added that even if there were such vacancies that he felt it inappropriate to transfer the claimant in any case. It emerged from this evidence that the manager to whom the claimant's comments were referred to was not aware of the disciplinary process conducted by the respondent against the claimant. She was neither invited to get involved in this matter nor had she ever made a formal complaint against the claimant. The witness assumed that this manager knew of the claimant's remarks relating to her.

While conceding that the claimant's comments on a linked web site did not directly name the

respondent the witness observed that those comments were in the public domain and linked to the respondent “in other ways”. However, he stated that no damage was done to the respondent’s reputation as a result of those comments.

### **Claimant’s Case**

The claimant commenced employment with the respondent as a sales assistant in August 2003. While maintaining that role she also took on the task of cash office duties as requested by her manager. In April 2007 the claimant was called into the office of the human resource manager where a complaint from a customer was discussed. That customer had expressed disapproval at comments made earlier by the claimant about her manager which the customer had read on a web site which in turn had links with the respondent. In accepting she made those comments the witness explained the circumstances and context to them. She was having an off day and was under pressure at work at the time. The human resource manager suspended her and a disciplinary hearing was arranged. The claimant’s comments were posted on her friend’s site, which in turn was linked, albeit indirectly, to the respondent’s site on the Bebo network. The claimant outlined possible links to the respondent but highlighted there was not a direct link. She regarded her message to her friend as just that but accepted that this message was accessible to the general public due to the nature of the overall Bebo site and its links. However, she accepted that other comments made, found later by the respondent during its investigation of the matter, were more directly linked to the A Wear Bebo site.

During the course of the disciplinary hearing on 10 April 2007 the claimant apologised for those comments and regretted making them. The next day she was informed of her dismissal by means of a telephone call. That call was followed up by a letter confirming that news two days later. She subsequently made a late application to appeal that decision and the respondent agreed to this. The witness admitted that her comments about her manager were “not very nice” and while she did not make excuses for them it was how she “lets off steam” in those circumstances. She told the Tribunal that she did not know whether the manager in question knew of the ongoing situation and so therefore she did not know whether to apologise to her directly.

### **Determination**

The Tribunal unanimously finds that the respondent acted disproportionately in dismissing the claimant in this case. While their disciplinary procedures were fair and proper their sanction was not. Certainly the claimant’s comments deserved strong censure and possible disciplinary action but they did not constitute gross misconduct in the circumstances. However the comments made by the claimant concerning her supervisor were indeed disrespectful, inappropriate and damaging the employment relationship and to that extent the claimant’s contribution to her dismissal was not insignificant. Accordingly, the Tribunal awards the claimant €4000.00 under the Unfair Dismissals Acts, 1977 to 2001.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 is allowed and the appellant is awarded €750.00 as compensation for two weeks’ notice.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

