

Sexual Harassment at the workplace

The behaviour shown by the Employee during the examination of the sexual harassment complaint against a member of the Board of her Employer, was a crucial factor considered by the Court of Industrial Disputes in dismissing the Application by which the Employee claimed damages for unlawful termination and damages for discrimination in accordance to Equal Treatment of Men and Women in Employment and Vocational Training 2002- 2006 (Law 205(I)/2002).

Facts

The Applicant employee submitted to the Executive Committee (the “Committee”) of her Employer, the Union of the Technical Personnel of the Electricity Authority, (Respondent 1), a sexual harassment complaint against Respondent 2, a member of the Committee of the Union and Manager of the Applicant.

The Applicant was employed by the Union since 1/11/2000 until 31/07/2008, when she was terminated without notice on the ground that the sexual harassment complaint submitted was false, unfounded and unsubstantiated, which together with the fact that she refused to provide evidence to support her complaint, had as a result the breach of duty of mutual trust and confidence necessary for an employment relationship to exist.

On 19/6/2008, the Applicant submitted a sexual harassment complaint against Respondent 2. In examining the complaint, Respondent 2 was excluded from the Committee’s meetings. Four days later, and upon consideration of the sexual harassment complaint, the Applicant was called by the Committee to provide supporting evidence to the allegations made in the complaint.

The Applicant, not only refused to provide any evidence to support her allegations against Respondent 2 but she also exhibited such abusive behaviour that was considered impossible by the Committee to manage and investigate the complaint in the Applicant’s presence. Despite the Committee’s assurances that the matter was to be examined confidentially and objectively in accordance to the provisions of the relevant Code of Conduct issued by the Administration Commissioner, the Applicant refused to provide any evidence if she was not allowed to be accompanied by 2 or 3 persons of her choice. The Applicant was not convinced by the

intentions of the Committee and behaved disrespectfully. For this reason, the Applicant was suspended for a period of 6 weeks, during which the complaint against Respondent 2 was to be investigated.

In the meantime, the Executive Committee informed Respondent 2 of the sexual harassment complaint filed against him and asked for his positions to the allegations against him to be submitted in writing. On 2/7/08, Respondent 2 submitted his reply to the complaint supported by evidence obtained by third parties as well.

The Committee by two letters dated 10/7/08 and 22/7/08 requested the Applicant to provide supporting evidence to the sexual harassment complaint in order to be able to investigate the matter on the given evidence; however, the Applicant ignored the Committee's requests.

As a result, on 22/7/08 the Committee examined the complaint before it in the absence of evidence from the Applicant's side, and dismissed the complaint on the ground that the complaint was false, unfounded and unsubstantiated. The Applicant was called to appear before the Committee on 31/7/08 in order to apologise for the "false" complaint made against her Manager, Respondent 2. The Applicant again, refused to appear before the Committee and it was decided that she was terminated on the ground that she denounced an Executive member of her Employer without any evidence in support, refused and/or ignored requests to provide evidence in support of the sexual harassment complaint against Respondent 2 and behaved in abusive and unacceptable manner when asked to provide supporting evidence.

Issues considered by the Court

In reaching its decision, the Court examined the following:

1. Whether the termination of the Applicant was a result of the sexual harassment complaint submitted, or whether the termination of the Applicant was due to her abusive behaviour in refusing to appear before the Committee and provide further supporting evidence;
2. Whether the Applicant was discriminated in accordance to the provisions of the Law 205(I)/2002.

Unlawful Termination

In considering the lawfulness of the termination, the Court referred to the principle of mutual trust and confidence, necessary for an employment relationship to exist. Specifically, the Court

mentioned the importance of the employee's duty to maintain a conduct that ensures mutual cooperation with the employer while undertaking employment duties which is achieved by observing behaviour of good faith, revealing proper manners and respect to the employer executives.

Furthermore, the Court applied the test of the reasonable employer based on the circumstances. The reasonable employer test is objective, and as analysed by the Court in referring to case law, abusive behaviour on the part of the employee has been proven to justify termination of employment without notice. On this ground, the Court was satisfied that the Applicant's behaviour when asked to provide further supporting document, but refused to do so, amounted to abusive behaviour that had as a result the breach of the duty of mutual trust and confidence necessary for the employment relationship to continue existing.

On this reasoning, the termination of the employment of the Applicant was found to be lawful and the Applicant was not entitled to any damages for unlawful dismissal.

Discrimination

In deciding whether the Applicant was a sexual harassment victim and, as a result, amounting to discrimination against the Applicant, the Court referred to ECJ case law where the elements of sexual harassment misconduct were examined and constitute of the following: (1) unwanted form of behaviour by the recipient, (2) of sexual nature, (3) with the purpose or effect of offending a person's dignity and creating an intimidating, hostile, humiliating, degrading or offensive environment during a person's employment, vocational training or effort to access employment or enrol in training. All three elements must co-exist in order for sexual harassment to be proved.

In accordance to the evidence given before the Court, the behaviour of Respondent 2 was not proved to be unwanted by the Applicant, but rather acceptable and ongoing. On this ground, no sexual harassment incidence was proved, neither any discriminatory act against the Applicant.

Conclusion

The application was dismissed.