

## **EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
Employee

CASE NO.  
UD1058/2006      MN686/2006

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: Mr. D. Mac Carthy SC

Members: Mr. M. Murphy  
              Mr. O. Nulty

heard these claims in Dundalk on 10 October 2007

Representation:

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Claimant(s) :

Mr. Stephen O'Sullivan BL instructed by  
Traynor Mallon & Co., Solicitors,  
86 Clanbrassil Street, Dundalk, Co. Louth

Respondent(s) :

Ms. Sheila Treacy, IBEC, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, was withdrawn prior to the 10 October 2007 hearing.

At the commencement of the 10 October 2007 hearing the claimant's representative stated that the remedy sought under the unfair dismissals legislation was reinstatement, re-engagement or compensation but that reinstatement was the preferred option. The representative explained this by saying that the best redress for the claimant would be a permanent job and that there was a freeze on jobs from the HSE. As the respondent was funded by the HSE it was in the same position as the HSE itself in respect of the filling of vacancies. The respondent's representative declared the respondent's opposition to reinstatement or re-engagement if the unfair dismissal claim were to succeed.

The written claim to the Tribunal stated that the claimant commenced her employment in the summer of 1981 and that it ended on 28 May 2006. It was alleged that she had been constructively dismissed. The respondent's notice of appearance argued that the claimant had voluntarily resigned her employment by letter dated 25 May 2006 such that no dismissal, constructive or otherwise, took place within the meaning of the unfair dismissals legislation.

### **Determination:**

It was clear to the Tribunal that the claimant did not make out a case to answer. She alleged constructive dismissal i.e. that her resignation was to be deemed a dismissal in that, by reason of the respondent's conduct, it was reasonable for her to resign or that she was entitled to resign.

There is a contrast between a constructive dismissal and a direct dismissal. They are like mirrors. The onus is on the respondent to justify the dismissal. The onus is on the employee to show that the employee was entitled to resign.

We gave the claimant a long time to go over her thinking as to why she chose to resign. There was about four weeks from her going out sick to her resignation. There was a letter that the respondent now concedes that the claimant did not receive. She did receive a letter asking for a statement.

The claimant said that her role had been reduced after she was moved to the medical centre. The claimant said that she was demoralised for a long time. She said that she was hearing rumours, that her husband told her to get out of her job and that her life was being ruined by it. The claimant felt that she had been singled out and that she was ultimately dealt with very harshly in respect of a minor matter. She said that this was the last nail in her coffin.

We asked about other nails and did not get a satisfactory answer. There is a particular duty on any employer which has care of people to carry out an investigation. There is also a duty to move an employee away from a patient. This had happened in the case of another employee. The claimant said that she knew of this. She cannot say that she was singled out. She did not take up the respondent's e.a.p. scheme.

It was argued by the claimant's representative that it was not appropriate for the respondent to accept the claimant's resignation. However, a constructive dismissal is where the respondent's conduct justifies resignation.

The claimant was an active member of the union committee and was fully aware of the respondent's grievance procedure. The claimant even got legal advice right through this matter. I don't think the claimant would be shy about seeing a grievance and standing up for herself.

We are of the view, for all these reasons, that the claimant has not made out her case. The claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

The Tribunal notes that the claim under the Minimum Notice and Terms of Employment Acts,

to 2001, was withdrawn prior to the 10 October 2007 hearing.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

