

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:  
Employee

CASE NO.  
MN67/2006  
UD125/2006  
WT22/2006

Against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001  
UNFAIR DISMISSALS ACTS, 1977 TO 2001  
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey

Members: Mr. P. Bracken  
Mr C. Ryan

heard this claim at Dublin on 11th September 2006 and 13th November 2006.

Representation:

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Claimant:

Mr. Mark Doyle of Actons, Solicitors, Newmount House, 22-24 Mount Street  
Lower, Dublin 2

Respondent:

Mr. John Flannery of John F. Flannery & Associates, 4 Father Griffin Road, Galway, Co.  
Galway

The determination of the Tribunal was as follows:-

As a preliminary issue there was a question of whether the Tribunal had jurisdiction to hear the case. The Tribunal heard submissions from both sides and then determined that they have jurisdiction to hear this case.

The respondent company was set up in Sept 04 by two individuals, one of them the claimant. Initially it was decided that neither would draw a salary while they developed the business. During the first year in operation the company did much better than expected. In June 05 both directors

were receiving salaries.

As the business grew the relationship between the two directors deteriorated. There was a problem relating to the company VAT number. Hiring staff also caused friction between the directors. The directors had different working styles and lived in different parts of the country.

On 1 Nov 05, the two directors held a meeting with a mediator, to seek a resolution of their difficulties. It was decided that they would explore alternative ways of keeping them both working in the business.

On 2 Nov 05, the claimant resigned as a director and secretary of the respondent company. Subsequently there were disagreements between the parties over a fuel card, a cancelled credit card and customers.

On 30 Nov 05, the claimant set up a company in competition with the respondent.

### **Determination**

It was clear to the Tribunal that there were serious difficulties in the working relationship of the two directors. This resulted in a meeting with a mediator. Notwithstanding the meeting, the following day the claimant resigned as director and secretary of the respondent company. This was not the action of a person wishing to resolve the difficulties between the parties. All of the actions of the other director were reasonable in the context of the actions and behaviour of the claimant.

The Tribunal finds that the claimant was not constructively dismissed and failed to discharge the burden of proof in that regard. The claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

The claimant resigned his position and so has no claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

The claim under the Organisation of Working Time Act, 1997 was withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

