

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

UD751/2006

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr. B. Kealy
Mr. S. O'Donnell

heard this claim at Dublin on 13th April 2007
and 31st July 2007
and 1st August 2007

Representation:

Claimant(s): Ms. Pauline Codd BL instructed by Ms. Aileen Fleming, Daniel Spring & Co.,
Solicitors, 50 Fitzwilliam Square, Dublin 2 on 13 April 2007
The claimant represented herself on 31 July and 1 August 2007

Respondent(s): Mr. Tom Mallon BL instructed by Mr. Kevin Barry, John Shiel Solicitors,
15 Clanwilliam Terrace, Dublin 2

The determination of the Tribunal was as follows:-

Background

Counsel for the claimant told the Tribunal the claimant was employed for twelve years with the company as executive director. In 2000 the claimant was manager of IRMG, AON and SINSEAR. The claimant was a service manager with AON along with J L and J F. EOB was MD and AOK was chief financial officer. GC became acting MD following the departure of EOB and SC was global head of captive management. AN became chief operations officer. Mr. EOB (MD) left the company and he was on extended leave and resigned in early 2005.

When EOB resigned it left a sour taste with SC who was global head of captive management. There was ongoing animosity towards people (the AON mob) of which the claimant was one. The claimant felt victimised in this regard and following EOB's departure the claimant's workload increased significantly. The claimant took on a number of new assignments and she did

not receive overtime payment for that. The claimant was led to believe that her salary would increase. Senior management did not receive a salary increase the previous year and she thought she would be recompensed. The claimant at this time earned €81,000 per annum. A dispute arose in the spring of 2005 in relation to her salary. Mr. N was recruited at a substantially higher salary than the claimant. The claimant felt pilloried for her association with EOB. A salary of €100,000 was proposed for the claimant in February of that year. GC (acting MD) told the claimant that her salary would be reduced to €87,000 and on appeal her salary was reduced to €83,000. Between February and July the claimant attempted to raise the issue and she felt that she was victimised due to the expectation of salary. The claimant lost faith with the respondent. On 21 July 2005 the claimant submitted a letter of resignation. The claimant was obliged to give six months notice and she hoped that the matter would be resolved.

On 21 November 2005 the claimant was told that she was being placed on garden leave and the claimant had no option but to leave the respondent. The respondent was determined to use salary to undermine her. The claimant gave numerous opportunities to the respondent to address the grievance and the claimant was scuppered on every occasion. The claimant had substantial support from company colleagues and she left the company in undignified circumstances.

Counsel for the respondent outlined to the Tribunal that the issue the claimant believed to justify her resignation was salary increase. In her letter of resignation she stated that it was with great regret she tendered her resignation. The claimant was not satisfied with her salary increase. The standard increase was 3% and the company looked at Ireland and elsewhere. Regarding the distribution of 3% some staff received more and some less. A salary of €100,000 was not approved for the claimant. There was no breach of contract. The reasonableness test was that the claimant received a 3% increase, which was the standard increase. The claimant was treated the same as other employees. Four employees were neither at the top or the bottom of the scale. The claimant was paid according to appropriate level of job. She resigned over a pay issue and another employee EOB resigned. The company wanted the claimant to remain in its employment. Mr. SC continued to enjoy her company after she resigned. At the exit interview the claimant was relaxed and everything was fine. The claimant left the respondent some time after that and she left of her own volition.

Claimant's Case

The claimant told the Tribunal that she was a fellow of the Chartered Institute of Accountants and she had a certificate in compliance and commercial law and had twenty-six years experience in insurance. She was head of insurance and commenced work with the respondent as a manager. The company structure changed in 2000. Her sole responsibility was insurance services, which the respondent provided to clients. AON had ninety-two insurance companies who needed a local director. Part of her salary had to be approved by the financial regulator. In 2000 EOB was manager and JB and JS were directors. The next in line was the local director and between that there were accountants and some accounts people. Three companies IRMG, AON and SINSE merged. Fifty thousand staff worldwide were employed. GC joined as a director and he was MD of IRMG. Four local directors were employed including the claimant. At that point SC was head of IRMG and she was not sure what his role was and he became CEO of ACSG in 2003. Over time he rose to the top and he lived in Dublin.

After September 11 the workload increased four fold and the local team merged well. She along with GC worked well together and they were a reasonably happy bunch. SC came to Dublin and prior to this he was based in New York. The work was fee driven and there was no element of

premium. The company expanded, staff left but were not replaced. The claimant worked approximately fifty hours a week and she was involved in new business. She was constantly unhappy with the level of staff, AON Dublin was profitable and AON global was not. No attempt was made to address local issues. The increase in staff and salary was not in line with the volume of work that was being undertaken.

EOB was asked to go on leave in August/September 2004 and his employment was terminated in February 2005. The claimant stated that SC did not like EOB. EOB shared a legacy of AON accounts. When EOB was no longer available the claimant took on his accounts and she had to deal with issues after he left. GC became acting MD and he had a technical involvement in IRMG account and a large percentage of the work that he undertook was given to the claimant. Towards the end of 2004 the company had to advertise for staff and there was a 70% turnover over a two-year period. Staff were overworked and underpaid and staff received 40% more pay elsewhere. The claimant's father died in 2004 and she worked six days a week. The business merged and turnover was much greater. She felt that AON people were top class and IRMG were good. The claimant felt that AON people were delegated to the B team. In early 2004 JL and FC were promoted to directors. They received a salary increase and benefits. The directorship was not formalised but she believed that promotions were approved at a board meeting but the paper work was not dealt with. Around this time she attended a meeting with GC, AOK and SC. SC created the role of chief financial officer, which did not exist in other domiciles and AOK, was appointed to this role. Two very good employees were demoted because they were AON staff.

At one point the claimant submitted her resignation to SC in November 2004. The next day GC discussed this matter with her. Because of personal issues it was put on hold until after Christmas 2004. She withdrew the resignation in January 2005 and she received e-mail from SC that he was happy with the decision. The resignation was not linked with her salary, it was a personal matter and it was a bad moment. A 3% pot of money was available to cover all increases including new recruits. The respondent had to have a very valid reason to justify hiring new staff and a cap was put on hiring staff. The pot of money had to protect staff and cost of living increases. A national wage agreement did not exist and no separate increments were in place. Local management apportioned money. She heard SC say that staff were looking for a 40% increase. SC told her to take part of the money and if one person was performing well to pay them well over the odds. If some staff performed reasonably well on the job she was told to pay them 1 to 2% or maybe 3% and it was not a flat 3%. It was an American style of remuneration and the senior manager SC had the final say. In 2004 a small amount of money was available and it was divided. It meant that there was no money for local directors and it did not apply to anyone else. It was very difficult for the claimant. The claimant and AOK were part of the local directive and AOK was responsible for internal matters. An executive committee was formulated and the MD was the go to person. In late 2004/early 2005 AOK and GC commented that A LcN was on the executive committee. In April 2005 GC told her that she would be given a large increase. The claimant did not receive a pay increase in 2004 and she did not receive anything in writing. GC mentioned this to her on three or four occasions and the amounts were not mentioned.

The claimant referred to an e-mail dated 6 April 2005 from GC, which referred to the "AON Mob".

This e-mail was sent from GC's home. In a further e mail, which was sent at 23.46 on 6 April 2005 GC, referred to the fact that he was "the meat in the sandwich". The claimant stated that she often sent e-mails at 4am. GC was unwell and this indicated his level of stress. SC was hoping to see the clear out of the "AON mob". GC as MD was party to a lot of matters that she was not party to. The claimant and GC discussed how to divide the money and it was a long laborious process. GC mentioned to the claimant that "you two ladies" AOK and the claimant

should get €100,000. The claimant sent e-mail to CJ at the AON head of captive services. He was GC's boss and a week went by. One Friday GC was in the office and he told her that he had something to tell her and he then informed the claimant that her salary was going to be €87,000 and AOK was left at €100,000. There was a sense of alarm and she felt demoralised and was quite upset. It started at €81,000, GC proposed that AOK get €81,000 and her salary was increased to €100,000. The CEO's salary was 50% greater than her salary. The claimant was told her salary was going to be €87,000. She sent a memo to GC in which she outlined her issues but SC had ultimate responsibility for salaries. She did not know who cut her salary and she believed that CJ may have issues with salary. She felt that some of the reasons she was given for the cut were unfair and as an AON person she would have known a lot about what happened. She was seen as a supporter of AON due to comments that she made to SC. She was a part of the AON team and she was upset by the EOB situation.

At one point she was aware of a meeting that GC, SC, AOK and CJ attended and she felt she should have been present. She introduced herself to a meeting in early 2005 as she felt that AOK, GC, CJ and SC were involved in discussions about issues and she was excluded from a number of informal discussions. She felt that she did not get recognition in the salary that was offered to her and as a member of the joint executive council her salary should reflect this. When GC told her that her salary was €87,000 she had a feeling that CJ and SC were happy with her but she had a feeling that they wanted to keep her down. GC suggested a bonus of €25,000 in 2003 and the previous year she received a bonus of €20,000. She was informed that she would not receive a pay increase and she would get a larger bonus. There was constant extra work and staff turnover and the respondent endeavoured to find new staff. The respondent did not turn away work and it was serving large global clients and had to provide an excellent service. The claimant worked ten hours a day.

She did not receive a response to her memo, which she sent to GC on 27 February 2005 in which she outlined her concerns regarding her salary. She asked GC to show the letter to CJ and SC and she assumed that he did. GC met the claimant again and told her that she was going to receive €83,000 and not €87,000. GC told the claimant that SC did not want to pay her an increase at all. He told her that she had received a good bonus amounting to €25,000 in 2004. She felt in the scheme of things it was a low bonus. The bonus related to 2004 and it was paid in February 2005. In her twelve years with the company she never once queried her pay and she was always happy with her salary. AOK received a bonus of €40,000 and she dealt with issues relating to accounts and there were no major differences in the work that both the claimant and AOK undertook.

She felt that the reason for the small pay increase was that SC felt pressurised by CJ to give her an increase. SC made a statement at a meeting that if you did not want to retain staff to put a freeze on a pay rise and she believed that this statement originated from CJ. She met SC in the office and had a long discussion about the role and she felt that the discussion was quite productive. SC told her that 3% was the amount that was in the pot and that there was some adjustment from the previous year's bonus. When EOB left there was a feeling that some of the staff were over bonused. SC told her how AOK's bonus was adjusted and the claimant felt it was outrageous. The first year after the merger the bonus was slightly different and it reflected bonus structure for IRMG. In the second year she believed it was similar and in the third year AOK was on maternity leave and that year her bonus was lower. AOK received a salary in 2003 when she was on maternity leave and the respondent did not pay salary for staff on maternity leave. The claimant thought that she might receive a higher bonus as the business was expanding at this time and several projects were being undertaken. The bonus reflected the long hours that the claimant worked. SC understood

that she asked for more money and she was not sure when she made the request. The claimant's salary was compared to staff in other domiciles and CJ undertook bench marking which took quite some time. She was led to believe that she was compared to two specific staff members, one who was head of Insurance in the Isle of Man and the other was the head of operations in Guernsey. SC told her that she would respect bench marking. She had the lowest base salary of all four in her group.

The regulations that the claimant dealt with in Dublin were quite onerous and she had fifteen staff in her team. The Isle of Man which was half the size of the Dublin office dealt with less complex issues. The respondent was responsible for premium taxes in Europe. The Guernsey office was bigger than the Dublin office and the work that was undertaken in the Guernsey office was slightly different than the Dublin office. She knew the person in Guernsey and it was smaller than Dublin. It had a smaller team and smaller accounts. The claimant dealt with global accounts. She discussed this with Mr. CJ and he told her that she was paid more than four staff who were older than her, she was forty-six at this time. CJ tried to defend the indefensible and he tried to present this and demonstrate that she was paid the same and it was not really a fair comparison. The claimant's job was unique and the respondent could have undertaken benchmarking. The charge out rate for the claimant was the same rate as for AOK. The service that both the claimant and AOK provided to their clients was equal and it was fee driven and it had a charge out rate per client. CJ told her that bench marking was not adequate and he had to take into account the size of the office and salaries of CEOs and the chief financial officer.

The Irish director's role was the lowest paid of all the directors. She could have assisted in the matter but no one asked her to do so. JR from an employment agency suggested to the claimant that her role was worth €100,000. At one point the claimant sent summary information to CJ and his hands were tied. He tried to defend it, and it was the comparator position and there was no development in bench marking. SC pulled the plug on bench marking and the claimant knew that he had the final say. GC and CJ wanted to pay the claimant but CJ pulled the plug, the reason he gave her was the other people were older than she was. SC was four years younger than the claimant. She thought that the staff member in Luxembourg was younger than she was. She felt that women generally speaking were not promoted. She felt that CJ would have preferred a man in her role and the claimant felt that he abused his position.

It arose as an issue with the company after she had issued a letter of resignation. She telephoned PS whom SC reported to. During the EOB matter PS did not come to the Dublin office. She telephoned PS in relation to her salary. She spoke to PS about what SC was like and that he was abusing his position. SC was four years younger than she was and he had a lot of power over people's lives. She was at a social function in 2004 and SC said to her "what do you do for sex" and he then said to her why would he appoint her as MD of the three companies. SC was changing his attitude and she was bemused by the remark. The claimant stated that if she was interested in becoming MD that she would feel harassed. She felt that the remark was inappropriate and similar remarks were made to other staff. It became an issue when she spoke to PS the chairman of the company. PS told her that he would let SC run the company and PS came to Dublin on one occasion. She e-mailed PS to contact her regarding the matter of her salary. He did not telephone her or respond to her e-mail. PS relayed matter back to SC who was abusing his position and that is why she compiled the e-mail. The claimant's job was her life and she was leaving due to SC's behaviour. She sent e-mail to PS in August 05. She felt that SC was not prepared to consider her role. She would have remained with the respondent if he had brought her salary up to €87,000. There was a 3% pay rise across the board. SC had a very senior role and he did not have a lot of experience managing people and his only experience was in the Cayman Islands.

She had huge experience in compliance and liaised directly with her clients. Anything she undertook as a senior employee she was personally responsible for. She felt uncomfortable with the lack of care, understanding and appreciation of the role she had. She had responsibility for twelve years and her seniors did not appreciate the role she had. She was satisfied that she had been made aware of the explanation that SC gave at a meeting. She thought AOK was adequately paid for the role that she undertook. The claimant undertook AOK's role for fifteen years as an unqualified accountant. The claimant dealt with global accounts and the work that she undertook was certainly not different than that of AOK, the process was different.

The claimant was quite frightened, stressed and was unable to sleep at night. She was signing off on documents that were particularly complex. She felt that the internal accounting role was levied up to this level. Her role was too onerous, she was signing documents to the best of her knowledge and belief and she received no guidance from AON globally about finite deals. She was totally responsible for team issues and she had no support. Deals could come in at 8p.m. and she had to ensure that she could stand over anything that she signed. She was exhausted, she had no problems with the nature of the work, and there was never an issue with her work. She did a great job and accounts were properly merged. She wanted to ensure her job was completed properly and she wanted to support staff. She dealt with complex contracts and that role was devalued. She did not have an issue with AOK but she did not feel that chief financial officer was the appropriate title for AOK's job. It was a role that was created and the claimant stated that she gave too much of herself to the respondent for several years. She found the fact that her salary was cut very hard to take. It was the process she had the problem with. She felt her role was undervalued, she did nothing wrong. It was now July 2005 and the matter was going on since February 2005. The claimant was simply exhausted and she went to the doctor who prescribed medication, which did not suit her. She took a week off from work as her father had died. She had very high professional standards. She was a director of thirteen companies as well as two AON companies. Her personal duty was to work out her notice and ensure that documents were signed off. She was afraid for her professional reputation, there was a risk that if something was not properly completed that it would come against her. The relationship that she had in the company was one of trust, she worked long hours and expected to be rewarded at the end of that. She did not have issues with local people but she had a problem with most senior personnel in the company. She felt too exposed and undermined to continue working in a fiduciary relationship.

Once she documented her grievance in a letter GC told her that this was not the end. He was very sorry to see her go. She received a letter dated the 8 August 2005 which was signed by GC the MD on behalf of the company. Mr. SC was responsible for the company and the management team had changed. She stated that PS had no input into the decision on her salary. She telephoned PS and asked him for ten minutes of his time. PS did not know why she was leaving the company and she was not present at the board meeting. She explained the salary issues and he told her that he would let SC run the company and she was very angry at that remark. He was chairman and the claimant was a senior employee. She told PS that SC was abusing his power. He thought that PS told her to pursue the grievance route. She told PS that she had issues with most senior executive officers in the company. There was no point in pursuing the grievance procedure if the staff member that she had the grievance with was dealing with it. She spoke to HR (LF) in London. She spoke to Mr. G HR director and he told her that LF would contact her and that she could pursue the formal or informal route. She did not recall been given a time scale. She thought that it would be dealt with

in two to three months. LF did the groundwork and she thought that PS was the person to adjudicate. LF reported to Mr. G. LF was part of AON UK and wanted it to go through the main AON company. She had faith in LF who came to Dublin and they both had a long discussion PS was to talk to various people but nothing happened. Nothing came of the grievance procedures and apart from the conversation with LF nothing happened. She was never given a letter regarding a grievance. She was told by CJ that her earlier resignation in 2004 was a factor in the low pay rise. An Estonian girl aged 23/24 was employed at this time. This employee complained about the claimant and the claimant tried to look after her. When she left the respondent in 2005 she received no bonus, the bonus was discretionary, she worked 50 hours a week. The Estonian employee made it her business to go to SC and he agreed to give her a bonus and other employees who left the respondent receive a bonus. She did not think that it was appropriate that SC should be dealing with the junior employee. The respondent had a client who was extremely abusive; the Estonian employee could not deal with this and a young man left the company due to the client's abuse. The claimant received an e-mail castigating her for referring to the client as a bully. GC was unable to deal with this matter, as he was ill. She needed CJ or SC to deal with it. She needed help from SC and she did not get help from him.

She was not sure if SC made a comment to her regarding the EOB matter. She had some hope that if PS was alerted that he might deal with issues. In September and October she did not hear anything. The claimant had no job to go to and she was quite open to a resolution of the matter, but she was gradually excluded. A job offer came up in November 2005 from a client of the respondent company GE. GE was setting up in Dublin and it needed a general manager, which was an ISFRA requirement. She had not told this company GE that she was leaving the respondent. She attended for interview and was offered the position, which was a part time role and she was exhausted. She had a very loose arrangement and EOB had set up his own company. She was facing unemployment and she could not make promises. The job that she was offered with GE had to be independent, of AON. She agreed on a package and she informed GC that she was relieved. She told GC that GE needed to speak to him and they needed office space. The company was going to be in operation around January. She thought that the respondent would be happy. She would also be in the offices if she were needed on a historical matter. She was happy to work in Dublin. She received e-mail from GC on 7 November 2005 to the effect that the arrangement with her working in the offices of the respondent would be difficult. She could see their point of view. The problem was they were not going to object to her with EOB, it was other players in the market. She could not work with the respondent and she would not be independent. She told him she would not take a key to the office. She told GC she would not be in the network and it was up to him to close the office. GC told her that he was not ready to do it. She was put under unbearable pressure. She felt bullied and harassed by GC, he was telling her not to work with EOB and AON were going to be the management company.

AON had issues as the claimant was going to be connected with a competitor of theirs. She had a few concerns with the location. She took Electric, as an account to EOB's company and it would not be possible to undertake work on that account. She was rostered to work two days a week. She could not provide services to other competitors and they were trying to control her. A meeting took place regarding regulator issues and present were GC and AOK. GC was not interested in a discussion and he became aggressive. The claimant was upset and she shouted at GC what is wrong with you. He was now trying to prevent her from getting a job. After the meeting she had a discussion with friends and she had to a job to undertake a couple of days a week. She decided on Friday morning that she would relinquish it and there was no reason why she could not do both.

On Monday morning she had no job. She was not going to be given a reference, she was quite

frightened and she wanted to speak with GC who was not available. She was informed that a meeting was taking place and that local legal advice was being sought. She stated that she was discussed at the meeting and she was left out in the cold. She could not get legal advice. People were plotting how to deal with her. At a meeting, which took place with GC and AOK on 21 November 2005, she was informed that she was not going to be approved for the role. They needed her to leave the premises and within half an hour she had left. She was told that she could leave by mutual consent or otherwise. Suddenly the respondent realised that she was a threat and the relationship had deteriorated. She left the office, she received a letter in the post but she did not sign it. She received a letter dated 22nd November 2005 informing her that she was on garden leave and that she was not required to attend the office from 21st November 2005 until 21st January 2006. LH who dealt with her grievance signed this letter. She sent e-mail to PS in which she explained that she was unhappy with the treatment that she received from the respondent company.

The claimant told GC that she was offered a job. The relationship had deteriorated and GC put her under enormous pressure. GC told her to speak to SC. She had no choice but to go on garden leave and she was very hurt. She had a good working relationship with GC. If GE were told the truth it would be fine. She was labelled in her view to a prospective employer. Her grievance against SC was in full flow. She asked GC if he had spoken to PS. She was paid up until 21 January 2006. She undertook consultative work for EOB for which she received €10,500. She helped EOB to get a company started in Gibraltar and she worked on a consultancy basis. At the moment her salary is €60,000 per year. From January to September she earned €10,000. She found it very difficult to obtain employment and she did not get called for interview. She was put forward for two general manager roles but clients were not interested. She failed to get interviews and she was told that she was too old. A competitor of AON offered her a job at €100,000 per annum plus benefits and she decided that it was not for her. At the moment she has an independent arrangement. She hopes to earn what she earned two years ago with the respondent.

In cross-examination the claimant stated that she was not happy with her cut in salary. The MD told her that she would receive €87,000 and when she put forward a letter her salary was cut. GC recommended €100,000 but that was not accepted. When asked if the only matter she addressed in her letter of resignation was the salary she responded that it was the process and that it was an act of malice on SC's part. She would have remained with the company if she received an increase of €87,000. She would have seen €87,000 as the first cut and the second cut was a different matter altogether. When asked if she was aware of the 3% pot of money she responded that she applied the 3% pot. She agreed that she distributed bonus to staff and not everyone got the same bonus. She accepted that the previous year she did not receive a pay increase. She received the lowest pay increase over two years and it was wholly unacceptable. Staff who did not know her recommended that her salary be cut back twice. She took on five additional directorships. When asked if she was a victim of the system she responded that she was a victim of certain people.

Senior managers did not receive a pay increase in 2004. Staff were paid for increased cost of living and this had to be found out of the 3% pot of money in 2004 and it was decided that senior managers would not take a pay increase. She was informed that the respondent was doing American style remuneration and providing a higher bonus. The bonus she received in 2005 was not high. The bench marking was not completed in a satisfactory manner and was probably based on flat salary. She was the lowest paid of all the insurance staff in Dublin. She sent a memo to GC and she did not receive a response. GC recommended that the claimant receive €100,000 and she made a plea to go to €92,000. She agreed that she blamed SC for not receiving her pay increase. When asked if SC acted maliciously without foundation she responded that her colleague AOK told her

that she had got on the wrong side of SC. SC did not care who left the respondent. When asked if her resignation was related to her low pay she responded she had been promised something and that staff were not aware of what was going on. She was blocked by the respondent for one job and six months later she was still endeavouring to find a job and she had specific skills. She did not have a problem with local management

In answer to questions from the Tribunal the claimant stated that the reason she submitted her resignation was due to a combination of things, there was a huge increase in her work and she was feeling quite stressed. SC contacted her and she met GC and discussed the resignation. She was very depressed at the time. An announcement was made that EOB was going to end up in the High Court and staff was very surprised about this. An employee from Estonia told GC that staff were not well managed. Staff were very busy and were in deep crises. SC called in his staff to complain about the claimant. When asked why she did not document her grievances in her resignation letter she responded that she could not get down to writing a long letter. She had a huge burden of work at the time and she thought it was important to emphasise the work per se. The respondent had an expectation that things would calm down in January. The claimant became a member of the executive committee. AON took over in 2001/2002 and she did not receive a new contract of employment. When asked what happened in relation to the grievance procedure she responded that she contacted PS and he suggested that she pursue the grievance route and that she talk to Mr. G the HR director. When asked if she had a discussion with HR she responded that she did not receive a response from them. Two senior managers as well as the claimant had their salaries cut back also. The claimant did not receive a response from HR. When asked if she discontinued with the grievance procedure she responded that she was blocked from obtaining another job. The claimant was put on garden leave. She felt that there was no point in pursuing the grievance procedure as the respondent was going to do a hatchet job on her.

AOK told the Tribunal that she had no recollection of discussing with the claimant that she had fallen out of favour with SC. She could not recall being supportive to the claimant in relation to her pay issue. She had a completely different job than that of the claimant. AOK outlined to the Tribunal her qualifications and her responsibilities in relation to various accounts. In relation to the pay increase mechanism, three to four people in the respondent appraised all staff. The MD was responsible for the executive council and he had to obtain further approval. In 2005 she along with two other members of staff made a proposal in relation to pay. These proposals could be accepted or rejected. It could happen that staff received a larger increase than she did. The claimant and AOK were subject to a proposal by GC. She was aware that the amount of €100,000 that GC proposed for her was accepted. She received the increase as she was promoted. She did not receive an increase in 2001, 2004 and 2006. She had heard of the AON mob (a group of employees interested in socialising with EOB. Sometimes drinks were organised which was paid for by the company). It was not her understanding that SC was trying to remove people from the respondent who asked for a pay increase.

In cross-examination she stated that Aim Dublin was a small company. When asked if the role of chief financial officer was a new role she responded that the MD was not around. When asked if the chief financial officer was not a full time role and if she employed a full time financial controller she responded that the role was always there. AOK took on the role of MD in the finance unit and she was appointed to that role in 2004. The internal controls that were in place were not adequate. She had a number of issues to resolve and she had a number of meetings with ISFRA. The financial controller was responsible for the finances of the company. When asked if she was responsible for monies and as the most senior accountant was a witness to the problem she responded that she had no involvement in AON International.

At the moment AOK has twelve directorships and when EOB left she had five directorships. She did not receive a pay increase in 2001. She had the use of a company car. In 2001 she was not aware of what her colleagues earned.

Respondent's Case.

SC for the respondent outlined in detail his qualifications to the Tribunal. He commenced work in Ireland in 1982/1983. He worked in the Cayman Islands and spent eight years in the USA. In relation to salary staff did not receive 3% across the board. A guideline of 2½ to 3% was used as a guideline. The increase was agreed in April. A head count was done in January and 3% was agreed for core staff. Some offices were smaller than others. The first round of submissions was generally rejected across the board. The MD undertook the budget for the local offices and some offices did better and received a ballpark figure. In local offices it ensured that the increase was beyond 3%. If offices received more than 3% then someone else lost out. His own salary increase was rejected this year. He regarded it as a recommendation and the respondent had four or five levels of employees and salary was not the only issue that was discussed. Salary, pension bonus and the use of a company car were all taken into consideration. SC did not accept that he acted maliciously towards the claimant. He sent e-mail to the claimant on the 8 December 2005 in response to the claimant's withdrawal of her resignation in which he complimented her on the great job that she undertook.

He did not try to get rid of AON people and the claimant was not treated differently than her colleagues in relation to her pay increase. He was aware that it was recommended that the claimant should receive a salary of €100,000 and the company made interim pay adjustments. The respondent had existed within a structure and a chief financial officer was appointed. AOK was approved by the board to this role and it was a real job. The respondent has about €9m turnover. He believed that AOK deserved the salary increase that she received and the board approved it. He could not recall when the claimant's salary was rejected. He signed off on a bonus for the claimant, which was determined by the amount of money at the respondent's disposal and it was distributed amongst performers. The claimant's bonus increased by 33%. The claimant had a defined benefits pension plan.

In cross examination when asked if he stated that he did not know the claimant very well he responded that was in response to an earlier question. Unless there was a significant performance by staff they remained within the 3% guideline. He knew AOK from his IRMG days and she was promoted to chief financial officer and the claimant was not promoted. When asked if the role of chief financial officer did not exist he responded that there was no structure in place. When asked if the structure in place in Dublin offices was similar to other domiciles he responded that it was incorrect. When asked if he oversaw the Dublin operation he responded that JB was responsible for it and SC moved to Ireland in January 2003 and he was chief operations officer. When asked if the company accounts were simple he responded that the respondent had to ensure that a chartered accountant properly managed the accounts. In relation to the salary increases of 3% staff always looked for more and the local MD always did the best for staff. When asked if he was aware that the claimant took on additional directorships he responded that he did not get involved. Most of senior staff were directors. When a senior person left the respondent there was a period of more additional responsibility and that happened in all of its offices due to high staff turnover. When asked if his qualifications were similar to that of the claimant he responded that it was true.

He was not sure if he saw the memo dated 27 February 2005 addressed to GC in which she outlined

her salary concerns. He agreed that some staff received higher pay increases than she did. He did not look at employees' salary. A number of executive committee members did not get a salary increase. When asked if the claimant spoke to him in Dublin regarding bench marking he responded that he documented the comment and he recollected that her job was unique. He did not think that bench marking was easy to do.

When asked if he was aware that the claimant started the grievance procedure at PS's suggestion he responded that he reported to PS who was chairman. He was aware that the claimant had lodged a grievance procedure. He was aware of a benchmarking document for the claimant. The grievance procedure was finalised in the HR department. It was his understanding that the claimant withdrew the grievance procedure and he did not know when she withdrew this. He could not recall what happened in the office on 20 November 2005. When asked if he told a prospective employer not to work with her he responded that he did not make that statement. She withdrew the grievance procedure, as she knew there was no point in pursuing it.

In answer to questions from the Tribunal when asked if it was usual for a group of senior executives to give a bonus to lower paid staff he responded that it did happen. When questioned regarding the claimant's pension he responded that it was the company view that staff were bonussed reasonably well. Harmonisation of the pension benefit was not easy to do. There was a high turnover of staff in the Dublin office and a high proportion of administration support. When asked if he was aware that the claimant was recommended a salary of €100,000 and it was then cut to €87,000 and then €83,000 he responded that there was no justification other than 3%. All senior officers were directors of many companies and the more directorships staff had the more responsibility they had.

When asked if the claimant had an expectation that she would receive a significant increase and this was not fulfilled he responded that he could only give his personal opinion and as AOK was promoted she received a significant increase. When asked why the claimant's expectation was not fulfilled he responded that it was beyond what was reasonable in the company. When asked if €5000.00 would have solved the problem he responded that was paid under bonus. The respondent loses people each year and he has to manage staff within a budget. An amount of €100,000 was available and each office had a defined pool. This money could be used for emergencies and for specific individuals. It could be used to retain staff and it was usually targeted at lower level employees.

The second witness for the respondent CJ told the Tribunal that he had been employed with the respondent for the past twenty years. In 2003 he looked after the European and Asia operation and last year he was promoted to look after the global office. He had discussions with various offices and came to an arrangement with the board for approval. Raises could be allowed below or above the level that was recommended. He went directly to GC and looked at the claimant's new proposal of €87,000. It was looked at in the context of the overall global figure. The bonuses that staff received the previous year took into consideration that no significant change had occurred. The pool of bonus at Dublin office related to profitability. If the respondent was not profitable no bonus was awarded and if it was a good year the benefit was better. All salary and bonuses were discussed at his level and at group level. He was satisfied that the claimant was treated fairly. GC recommended a salary of €87,000 for the claimant but it was not accepted. The purpose of the discussions was to come to a consensus of opinion. The claimant complained about this. He was aware that the claimant requested benchmarking due to the issue with her salary increase. The problem in Dublin was to find a comparator. He was satisfied with bench marking within the parameters. GC recommended that the claimant receive €100,000 and €87,000 was then recommended and he was not aware that there was an expectation on behalf of

the claimant.

In cross-examination he stated that he found it very difficult to find a true comparator for the work that the claimant undertook. He saw the memo dated 27 February 2005, which the claimant sent to GC in relation to her salary.

The HR manager for AON in UK LF told the Tribunal that she reported to Mr. G the director of HR who was based in London. She had not met the claimant prior to 2005 and she had met SC, GC and CJ. An informal process was undertaken with HR and Mr. G assigned her to the process. Mr. G gave her the claimant's details and she received a document in September 2005. She told the claimant it was a confidential matter and she met the claimant in Dublin on 23 September. When she obtained the full version of the meeting she was in a position to investigate. She spoke to the chief operations officer DD about the claimant's salary. She also spoke to GC, CJ and SC and she had notes of meetings. She compiled information and drafted a letter to the claimant with the outcome. She drafted the letter but never sent it as the claimant told her that she did not want pursue the matter any further. The reason that she was selected to undertake the grievance procedure was that she reported to Mr. G and she had no connection with Dublin. It was her understanding that the claimant's grievance related to salary review.

In cross-examination LF stated that she received an e-mail on 9 August from PS regarding salary review process. When asked if she was aware of the circumstances leading up to the claimant's garden leave on 20 November she responded that she was. When asked if she spoke to DD she responded that she did. She issued the letter regarding garden leave, which she sent to the claimant.

When asked why the claimant withdrew her grievance she responded that she did not ask the claimant her reasons for doing so. The claimant told her on 12 December that she did not want to pursue the matter any further. She did not telephone the claimant after that. She wanted to ask DD how to deal with the matter. When asked what was the company approach regarding valued members of staff and staff with long service she responded that the company dealt with all grievances in the same manner.

The HR director of the respondent Mr. G told the Tribunal that part of the review process was to ensure compliance with company policy. Any anomalies were explained and understood. Salaries were a very emotive issue. As far as possible the respondent tried to avoid staff becoming aware of recommendations. The HR director was not advised of his salary recommendation. The employees were privy to confidential information and it should not be used outside of the confidence. GC signed off on decisions in relation to salary. Cases in relation to salary were well pleaded and the danger in the company was that the cost base increased. The only assets the company had were its staff and it could not spend money that would undermine its position. It financed a major organisation and the respondent costs were higher than its competitors. He dealt with issues on a daily basis. If the respondent acceded to a request it had to be very careful how it managed procedures. He along with GC and SC had to make judgement calls and the consequence of this was the claimant felt she wanted to leave and seek better remuneration.

A profit pool of bonus was available to the respondent. Local management allocated finances. Funds out of overall bonus could be used to retain junior staff. Some staff in the Dublin office did not get a bonus and junior staff tended to get a bonus. He was not aware of any malice in the e-mails that SC sent to the claimant. A firm decision was taken regarding the claimant's salary and he understood that the claimant was disappointed at the outcome. At the time of the annual salary review salary funds were 2½ to 3%. Staff who fulfilled expectation of role and had no performance issues received 3%. Staff whose performance was not satisfactory received 0%. He appointed LF

to deal with the claimant's grievance procedure. He was familiar with the national wage increase but the respondent was not regulated in terms of pay. The company policy was that discretion can be applied and it contained overall employment costs

In cross-examination he stated that he was not aware that Dublin salary was 33% of top line form. When asked if there was a serious turnover of staff in Dublin in 2004 and 2005 he responded that there were always pockets of turnover. When asked if local executive staff were under immense pressure he responded that they were. When asked if he was aware of an e-mail dated 8 December 2005, which the claimant received from PS in relation to the position that she was offered with GE Dublin, he responded that he had a duty to provide accurate information to another employer. He stated that the fact she could be working in the office could have lead to difficulties. When asked if that is what GE told him he responded that he did not know. He stated it was company policy to provide a standard reference. When asked if she was promoted to assistant director and executive director and that this was not documented in her reference and that it was a false statement he responded that she was allowed to have her view. He stated that the claimant continued in employment after her resignation and that there was nothing unusual about that.

Determination:

The Tribunal notes that the primary issue in this case was the claimant's salary.

This issue was not the subject of an express term of the claimant's contract with the respondent. Accordingly, the Tribunal cannot find that the claimant's difficulties with her employment arose from a breach of any contractual term on behalf of the respondent. More importantly the issue of the reasonableness of the respondent's conduct had to be considered. The claimant had an expectation that she would receive a substantial salary increase in 2005. Following the company's internal salary adjudication process, with which she was personally familiar, her expected salary increase did not materialise. In the opinion of the Tribunal this did not amount to unreasonable behaviour on behalf of the respondent.

The Tribunal notes that the company's salary structure and in particular its bonus system is somewhat rigid. It regrets that whatever flexibility did exist was not applied to the benefit of the claimant, particularly having regard to her experience and expertise.

The Tribunal notes that the claimant did not invoke the grievance procedure prior to tendering her resignation and when she did so, she withdrew from the procedure prior to its completion.

In the circumstances the Tribunal holds that the claimant has failed to discharge the onus which was on her in relation to her claim for constructive dismissal, and consequently her claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

