

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD1210/2006

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N O'Carroll Kelly BL

Members: Mr D Moore
Mr P Woods

heard this claim at Wicklow on 27th July 2007

Representation:

Claimant :

B.J. O'Beirne & Co., Solicitors, 3 Church Buildings, Main
Street, Arklow, Co. Wicklow

Respondent :

No representation for or on behalf of the respondent or Liquidator

The determination of the Tribunal was as follows:

The fact of dismissal was in dispute in this case

Claimant's case:

The claimant commenced his employment with the respondent in mid February 2005 as service manager. He did not have a contract of employment and the terms and conditions of employment were not explained to him. He resigned in October 2005 having been told by the proprietor that if he resigned he would get a reference otherwise he was going to be fired. His salary was €32K per annum as service manager. In June 2005 he was promoted to construction site foreman and his salary was increased to €38K per annum. The claimant was suffering from nervous exhaustion and his general practitioner recommended that he take two weeks break from work. He was

working long hours driving up and down to Dublin. In September 2005 his doctor wanted to put him on two weeks sick leave however the claimant did not want this on his record and suggested to the respondent he would take annual leave instead. The respondent said he could not take the annual leave and if he did so not to come back to work. The claimant signed his resignation as he had no other option open to him. It was not an easy decision for him to tender resignation since he requires a work permit and did not have an alternative job in its place.

In December 2005 the respondent contacted him and offered him a job at a salary of €28K per annum and he accepted the offer as he could not get work elsewhere despite attending interviews and he also needed to support his family. In January 2006 he re-commenced his employment with the respondent as stock control manager. He felt he did a good job and was praised for his efforts. In June 2006 he went on holidays and during his holiday period the operations manager phoned him on the Thursday to say the proprietor asked that he convey to him that he did not want him to come back to work. All he said was that the stock was not correct. As far as the claimant was concerned the only item that was out of stock was a certain handle for windows and the claimant said this would be normal in the construction business. He tried to explain but his manager had lost confidence in him. The respondent said that if he signed a letter of resignation they would give him a reference otherwise they would fire him. As far as the claimant was concerned he was dismissed. Two months later he obtained alternative work.

In answer to questions from Tribunal members in relation to the first time that he resigned and did not want to take sick leave witness said that he did not want sick leave on his record. He handed in a sick note and when he returned after the sick leave he requested that it be cancelled and that he would take annual leave. Not wanting sick leave on his record was a personal thing. After this the respondent was adamant that he tender his resignation or he was fired. In relation to his being forced to resign in June 2006 he said his manager/proprietor did not want to listen to his explanation in relation to the stock and did not want him as an employee. When he requested the go-ahead to increase stock levels he was told that the respondent could not carry big levels of stock.

It took eight to ten weeks for new stock to come in. If the stock was the problem he did not get a verbal or written warning in this regard. He was vaguely aware of a difference between resigning and being fired. Another one of his colleagues who is Irish also tendered his resignation. He received a P.45 on both occasions when he resigned. He received two letters from the respondent stating that he was a good worker and he was happy to receive them.

Respondent's case:

Neither the respondent or Liquidator were present or represented at the hearing. The Tribunal gave the Liquidator the opportunity to contest the claim however in his response he stated that he did not wish to do so.

Determination:

The claimant failed to satisfy the Tribunal and failed to produce satisfactory evidence that he was constructively dismissed. The claim under the Unfair Dismissals Acts 1977 to 2001 is therefore

dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

