

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

UD733/2006
MN486/2006

against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T O'Mahony B.L.

Members: Mr J. Hennessy
Ms. E. Brezina

heard this claim at Kilkenny on 16th May 2007
and 6th September 2007

Representation:

Claimant(s): Mr. Eugene O'Sullivan, Poe Kiely Hogan, Solicitors, 21 Patrick Street, Kilkenny

Respondent(s): James Harte & Son, Solicitors, 39 Parliament Street, Kilkenny

The determination of the Tribunal was as follows:-

This case came before the Employment Appeals Tribunal by way of constructive dismissal.

Background

The respondent centre provides emergency accommodation and assistance for homeless males over eighteen years of age and has been in operation for around twenty-seven years. A large percentage of the residents are addicted to alcohol and/or drugs and while some of the residents are under the care of a psychiatrist the centre is not a mental health facility. The centre endeavours to make the residents independent and break the cycle of homelessness by empowering the men through their personal action plans to take control over all aspects of their lives. Up to forty-five males are accommodated in the house and in 2005 the respondent provided eight units for residents to enable them to live independently. The centre provides full-time care twenty-four hours a day, three hundred and sixty five days a year. The Board of Management had incorporated its dry house rules into its "Rules for Residents". The rules minimised the risks to staff and other service users. During the admission procedure the resident is made aware of these rules and that non-compliance with them at any time would result in his being evicted from the centre. Under R

ule H of the Rules for Residents a service user is not to return to the centre under the influence of alcohol, drugs or solvents; under Rule M all drugs, alcohol, solvents and dangerous implements are to be deposited at reception. The centre works in close conjunction with several local statutory and voluntary agencies. The respondent has charitable status and is funded by the local county council, the HSE, charges paid by the service users and fund raising. The chairman of the respondent, a solicitor, acted for Kilkenny County Council which partly funds the centre.

Claimant's Case

A former Administrator (FA) of the centre gave evidence on behalf of the claimant. He told the Tribunal that he had commenced employment in the centre in 1992 as head of care and became manager of the centre in August 1996. He resigned from the centre in October 2005. The dry house policy was in operation during the course of his and the claimant's employment at the centre and formed part of the staff's terms and conditions of employment. Experience and supervision was needed to deal with people who presented in the acute stages of alcoholism and drug abuse. Those exhibiting acute psychiatric symptoms, behavioural problems, violence or those in obvious need of treatment for physical problems were not admitted to the centre. Due to lack of medical cover such people were not admitted but specialised agencies equipped to provide such services existed locally; where it was obvious that a service user was not capable of making arrangements a member of staff would intercede on his behalf with the agency to gain him access. The major proportion of the residents had severe addiction and/or alcohol problems and without a therapeutic environment it would be impossible for them to overcome their addictions; an addict is always only just one step away from his addiction. As part of his job description the witness would not allow people with drink and/or drugs entry as it could possibly lead to his dismissal.

The Board of Management were made aware of all the aspects of management on a monthly basis but then some information was required more frequently. On 3 June 2005 FA received correspondence from the Director of Services of Kilkenny County Council informing him that its funding for the centre was being suspended until such time as he co-operated with the new care plans for residents and provided a weekly, rather than monthly list of the number of residents. The staff were already snowed under with paper work, which reduced their time with the residents.

Following discussion FA had with the Board of Management eight new units (Halfway Houses/Transitional Houses) were built on the centre's grounds. The plan was to house the residents in these for an appropriate period and employ a tutor there to help them develop skills before their move to independent living. Kilkenny County Council, although county councils rarely if ever do, insisted on taking up the 25% occupancy in the units, to which it was entitled under the grant aid provided. This undermined the overall security of the centre because individuals housed in the units by the County Council had keys to the grounds and were not subject to the 10.00pm curfew. The staff at the centre were very concerned at this development but neither the Board of Management nor the County Council listened to their concerns or to the alternative put forward to them by witness. His trade union representative wrote to the respondent's Chairman on 26 August 2005 about the issue but she did not receive a response.

In 2005 the Chairman of the respondent furnished FA with a document entitled "Draft Interim Admission Policy for "{the respondent}". Under the draft policy the centre would have to accept all referrals from the Homeless Action Team and as manager the witness would have to ensure that the centre would participate with the Homeless Action Team in developing personal care plans for the service users. If implemented, this would remove the decision-making

functions regarding admission from the staff of the centre. The draft policy undermined the autonomy and discretion of the person admitting the service user, which had been agreed in 2002 with the South Eastern Health Board. It also undermined the centre's dry house policy. Under it the Homeless Action Team would see the client the day prior to admission when he may not have been manifesting a problem. As a carer his role was to help people overcome their addictions and the dry house rules greatly assisted in this. To allow people bring drink into the centre or to enter the centre drunk where others are working hard to overcome their problems would promote addiction. He felt that the dryhouse policy was under threat as was the safety and security of the residents and those working there. Failure to apply the dry house rules would change a material term in the employees' contract of employment with the respondent. There was no obvious need for the change of policy. FA understood that when the draft interim policy was presented to him, it was about to be presented to the Board of Management. He could not recall a meeting with SEO and the HSE manager for the area in August regarding the revised admission policy. The Chairman gave him a copy of the interim admission policy and he submitted his observations on it to the board but they never referred back to him on it. He had been punched and kicked by a resident. The witness resigned from the respondent on 15 October 2005. On 20 October 2005 the trade union Branch Official again wrote to the respondent's Chairman seeking information on any proposed changes to dry house policy and the employees' terms and conditions of employment but he did not receive a reply.

FA was the only qualified psychiatric nurse in the centre and it was his role to set up and order the weekly medication for the residents from a general practitioner. A large number of the residents were on medication for either physical or psychological ailments or both. The claimant carried out these duties under his supervision on occasion but if there were any queries in this regard he was on twenty-four hour call. The reason for supervising and securing medication was due to the addictions amongst the residents. He was surprised when the claimant told him that he had been requested by his successor (the Manager) to set up and supervise the drug programme, which was endorsed by the chairman of the Board.

GA found the claimant to be honest, totally dedicated to his job and would go out of his way even during his off duty time to assist or seek assistance for a client. He was a huge loss to the centre. The witness felt that the claimant would have been the ideal candidate for his position when he (the witness) retired.

The claimant told the Tribunal that he commenced employment with the respondent on 1 October 1997 as a social care worker. He was issued with a contract of employment each year but his terms and conditions of employment never changed. The centre was a dry house and the primary rule for the service users were not to enter the premises either under the influence of alcohol or with alcohol on their person. Only one care worker was on duty at any given hour. When a service user was admitted to the centre the care worker had to ensure that he was not under the influence of alcohol or drugs. Service users came to the centre because of the dry house rules. The claimant loved his job. From 2004 FA was having problems with the County Council and he resigned on 10 October 2005. The centre was left without an administrator/manager for over two months. The claimant and another social care worker were appointed acting administrators on an alternate basis until a new manager was appointed in mid January 2006. Neither the claimant nor his colleague who had been acting administrators had been interviewed for the position.

Events arising from an incident that occurred in late October 2005 gave the claimant cause for concern. Service user TX left the centre on 21 October 2005 and arrived back on 26 October 2005 with a strong smell of alcohol from him. This was the third time that TX had returned to the centre

with drink taken. The claimant discharged him from the centre and gave him a rent refund. SW (social worker) telephoned him that afternoon and asked the claimant why he had refused to admit TX. When he explained the reasons to her she said that TX did not look drunk. He explained that TX had drink taken and when he asked if she got a smell of alcohol from him she replied that she did not because TX was in reception and she was in her office. SW told him that he was in breach of the agreed policy between the respondent and the County Council and referred to a Draft Interim Policy. SW then referred to the staff in derogatory terms. She referred the matter to SEO (the Senior Housing Executive on the County Council) who telephoned the claimant that afternoon. She too queried the reason for his refusal to admit TX to the centre and again referred to an agreed policy between respondent and the County Council and to the draft interim policy. He told both officers in his respective conversations with them that they appeared to be the only ones that knew about "the agreement". SEO then, as a director of the respondent, instructed him to re-admit TX to the centre but the claimant refused on the basis that to do so would breach his contract and in addition that any change to the admission policy was a matter for all the directors and not just one of them. When the claimant contacted the funding officer in the County Council and explained the situation to him the officer told him that he was backing any decision SEO was making and that if TX was not re-admitted he would stop the funding and close the centre. He then said that the centre was "like the prison service". Under the direction of the respondent's Chairman and the threat of closure of the centre the claimant agreed, under protest, to re-admit TX. However on the evening of 29 October he again discharged TX for returning to the centre with another male, both having a strong smell of alcohol from their breaths.

The impression the claimant was given was that the dry house rules did not apply anymore. He had not received anything in writing in relation to the change of policy and he had never seen any draft interim policy. His union representative wrote to the respondent on 20 October 2005 requesting a meeting with the Board of Management regarding the resignation of the administrator and the proposed policy changes for the centre. The majority of residents came from a central rehabilitation programme and would have spent time working in Dublin and then they came to the respondent because of its dry house policy. The respondent had excellent care plans, which had been established by the Health Board. A service user who had drink taken assaulted the claimant twice on the night/morning of 5/6 November 2005. A report of the incident was sent to the Chairman and the board. On 15 November the claimant lodged a complaint with the Health and Safety Authority because the change in policy had made his workplace less safe. Because of his concerns the claimant prepared a submission for the Board of Management for the December 2005 meeting but the Chairman told him there was no meeting of the board until January 2006.

FA had a set regime for dealing with the residents' prescribed medication. The medication was prescribed by a GP and may be prescribed for months ahead. FA collected it and brought it back to the centre. Each resident's weekly dosage was in his dispensing box, which was controlled by FA and under his supervision by the claimant. The system worked perfectly well. In November 2005 the Chairman instructed the claimant that he was no longer to supervise or administer the residents' medication and that the residents' monthly supplies were to be handed over to them and that they (the residents) were to go to their GPs for their medication. The claimant was concerned and angry about this instruction: residents were on sedatives, anti-depressants, moderate stimulants, sleeping tablets and anti-psychotic or cardiac medication; some were on vast amounts of medications and could be taking three to four lots of medication in one day; some residents who were suffering cross addictions could abuse the drugs and some residents suffering from amnesia may forget to take their medication or, not realising that they had already had taken their medication, overdose. The care staff registered their objections. The claimant contacted the residents' GPs and Dr. C, the GP to the centre and the Psychiatric Services: the claimant and other care workers contacted other

directors of the board and Dr C wrote to the Board about the matter. Ultimately the instruction was reversed.

A manager was appointed in the centre on 18 January 2006. He presented the claimant with a supervision contract under which they were to have confidential meetings every two weeks or once a month. The Manager wanted the claimant to sign this contract. The claimant sought certain clarifications in relation to it. The Manager is not a psychiatric nurse. At an early supervision meeting the Manager asked the claimant to review and draw up a chart on the medication, dispensing and recording procedures, which would include the dosage and times for administration of the medication and to report on this to him at the next supervision meeting; the Manager told him he was seeking a new structure that would allow more accountability. The claimant became concerned at the increase in the number of drink related problems in the centre. There had been sixteen such incidents between 22 January 2006 and 12 February 2006. The claimant expressed this concern to the Manager, who told him that he would back any decision made by a staff member but would review it the next day. He also told him that a resident was not to be discharged unless he assaulted a member of staff.

At the supervision meeting held on 1 March 2006 there was further discussion on the supervision contract. The Manager explained that it had nothing to do with his contract of employment, and that it was between the two of them and that he wanted the meetings to be in private. The claimant agreed to sign the contract subject to certain conditions. The claimant declined to draw up the chart on the medication, dispensing and recording procedures, because he was not medically qualified and felt it would be unsafe to do so; these matters were best dealt with by trained staff. In March 2006 a trained nurse came in one day a week on a voluntary basis to deal with the medication issues. At the meeting on 1 March 2006 the Manager then went on to outline three complaints that had been made against the claimant. The Manager was of the opinion that one of the complaints was very confusing and for that reason he was presenting it to the Board of Management. The claimant asked the Manager for the complaints in writing so that he could respond to them. While the complaint was confusing the Manager had not sought to clarify the issue with the complainant. The second complaint was from an outside agency and referred to a resident's fear that the claimant might have him involuntarily admitted to hospital; no formal complaint had been received in relation to this. The third complaint alleged that the claimant had approached a member of staff to write a letter in support of the dry house rule but the claimant was not furnished with a copy of the original complaint. The Manager also told him that he "may have" breached confidentiality. In his letter of 4 March 2006 the claimant asked the Manager how he might have breached confidentiality. Whilst the Manager was willing to both accept all the complaints against the claimant and to present them to the Board of Management he was not willing to follow the usual procedure of first providing the claimant with copies of all of the complaints and seeking his responses so that he (the Manager) could present a fair and balanced view to the Board of Management. In his letter of 4 March 2006 he set out his grievance about the manner in which the complaints were being dealt with and asked to have his letter forwarded to the Chairman asking that he (the Chairman) consider certain action in relation to the complaints.

The claimant felt that he was not receiving support from management. He felt he was no longer part of the team due to the fact that he had raised his concerns. As far as he could recollect he had never been the subject of a complaint from 1997 to 2005. The first time that any complaints had been made against him was in March 2006 while he was on holiday. Neither the Manager nor the Chairman responded to his letter of 4 March 2006; nor were his concerns about unsafe practices addressed. By letter of 16 March 2006 addressed to the Manager the claimant tendered his resignation and asked for a list of the complaints lodged against him and that he be allowed to

attend the board meeting on 20 March 2006. The Manager replied, by letter dated 20 March 2006, accepting his resignation without question. On 21 March 2006 the Manager wrote informing the claimant that since he was no longer a member of staff it would be inappropriate that he attend a board meeting. Likewise, as regards his request for the list of the complaints, he was informed that since he was no longer a member of staff, the complaints were not raised before the board and were not documented on his file.

In cross-examination the claimant stated that while SW formed the opinion that TX should be admitted she had not met him on the day. He had never been told by the Chairman that the dry house policy had been changed but from SW's and SEO's statements to him in their conversations with him on or around 26 October 2005 regarding an "agreed policy" and a draft interim policy he understood that it had been changed. Furthermore when he contacted the funding officer in the County Council and explained the situation to him the officer told him that he was backing any decision SEO was making and that if TX was not re-admitted he would stop the funding and close the centre. When he reported the incident to the Chairman he asked him to write a report on it. TX told the care workers that if they did not let him in he would get on to the County Council and they would get him in. The directions given by the Chairman and the officers of the County Council if carried out would constitute a breach of the dry house rules. When he requested a copy of the agreement between the County Council and the respondent it could not be found. He agreed that he had been told that there would not be a full board attendance in December and to present his report to the board in January. The chairman told him that he was going to get a nurse appointed and all the suggestions would be put in place and staff would not handle medication.

He was asked to sign an agreement stating that his job would not interfere with any personal aspect of his life. The claimant was informed that this was part of his contract. The claimant took detailed notes of meetings very carefully and on 8 November 2005 he spoke to Dr. C. When he presented his case to Dr. C he told him to put it in writing to the chairman.

In reply to questions from the Tribunal the claimant stated that while the care staff were instructed not to admit anyone under the influence of drink they had not been given any guidelines as to what constituted being under the influence and had to use their own discretion. Service users were sent away four or five times per week because they had drink taken and they came back when they had sobered up. If a service user was allowed in drunk and assaulted a staff member the County Council would reprimand the respondent.

Respondent's Case

SEO (the senior executive officer), employed in the Housing Section of Kilkenny County Council and also a director of the Board of Management told the Tribunal that part of her duty is to look after the homeless and to ensure that they have accommodation overnight and that they do not die. She uses accommodation provided by the respondent, another centre and sometimes B&Bs. The County Council provides some funds to the respondent for accommodation for homeless men. There is always pressure on the system, especially in the winter. On 9 September 2005 FA, a project manager for the homeless with the HSE and the witness discussed a draft document on the centre's admission policy but no changes were made because they had not finalised their discussions. On 15 September they met and discussed the admission policy for the eight new units and this was finalised and brought to the board; this was the only admission policy that came to the board. In her three years on the board the admission policy had not changed. Around early 2005 the County Council requested a review of the admission policy. In 2006 a full review of all the

operations of the centre including admission was done but the claimant had left at that stage. SEO confirmed that, in her capacity as a housing officer, she spoke to the claimant, who was acting manager of the respondent, on a number of occasions during 2005. She denied telling the claimant to admit any homeless person who was drunk. She asked him to admit men, who were at risk of continuing to sleep on the street, when they had sobered up. She spoke to the Chairman on a number of occasions during this time in relation to admitting homeless males to the centre. She did not take notes of the telephone calls she made to the claimant as they were made in the normal course of her work in an effort to ensure that the homeless person did not continue to sleep rough on the streets during the winter period. She accepted that the claimant was clear that in their conversations she was discussing the admission of a client to the centre.

In cross-examination SEO stated that the respondent provided accommodation for males over eighteen years of age, the Amber centre provided accommodation for females and children under fifteen years of age so the Amber centre was not an option for males. The respondent had a policy to accept males when sober; if they had drink taken they were asked to go away and come back. She agreed that the dry house rule was a fundamental condition of an institution but added that accommodation had to be provided for males over eighteen years. While the County Council provides funding for the respondent since it was opened as a hostel it does not dictate policy on admissions. She agreed with FA'S evidence that the dry house policy was under serious threat in 2005. She spoke with the claimant several times on the telephone. She did not ask the claimant to take in a client when he was drunk. She reiterated that she told the claimant to ask the client to go away to sober up and to return. When the client returned the claimant as acting manager, could make a decision. She did not agree that her telephone call to the claimant was an interference with his employment. She did not interfere with the day-to-day management of the centre. The suggested change to the dry house rule would be in line with the national position as directed by the relevant Department. The intention is to accommodate people over eighteen no matter what their problems are. The draft policy was later discussed, all were asked for their views and serious thought was given to change the policy to cater for the changing needs but this occurred after the claimant had left the respondent. Security of staff is always an important consideration. She could not recall the suggested change being discussed at any board meeting. It was agreed by the board that a review would be carried out and staff would be consulted during the review. She was not familiar with the day-to-day operation of the centre. She accepted in hindsight that some aspects of the claimant's position had changed before he resigned but she was adamant that she did not instruct him to take in a client.

A board meeting took place either every month or two months. The chairman brings employees' concerns to the board. She was not qualified to answer how long it would take someone to sober up. She had to ensure that an individual did not sleep on the street. She agreed that a change in the dry house rule would be a material change in the working environment. When asked if the claimant deemed that this was a change she responded that several clients were admitted to the centre after breaking the rules. She agreed that care workers had discretion not to admit someone who was drunk.

The Manager of the centre told the Tribunal that he was appointed to the position on 18 January 2006. He had worked in the social care area, including time in the homeless services, for over twenty years. Men were not admitted if they were under the influence of drink. On very wet nights they could not be left out in the rain and they were told to remain in their rooms. The residents have complex problems and the drink or drugs problems are the manifestation of those underlying problems. It is a constant struggle to decide on admission. The dry house policy still existed in January 2006 and if anyone was under the influence of alcohol/drugs they are not to be admitted.

He supported any decision that his staff made.

In February he had a meeting/supervision with the claimant and presented him with a supervision contract. The claimant's belief that supervision invaded aspects of his personal life was a misunderstanding. Supervision was a two-way process and it ensured that the employee communicated with his supervisor. This was a new way of undertaking supervision. It was the kind of supervision that the witness was used to.

The staff work with the residents and support them through a care plan to take control of their lives. Staff did not know what medication had been taken by the residents and they needed to record it so he asked the claimant, who had an interest in the area, to review the medication, dispensing and recording procedures. He asked him to draw up a chart with the names of the co-workers, the list of his medication and times of dispensing as well as the signatures of the co-workers involved. It was necessary to ensure that people on medication were not double dosed. He had not asked the claimant to implement a new structure. From his review of the records there were ten incidents involving drink and not sixteen as the claimant maintained.

The claimant was on holidays from 12 to 27 February 2006. During this period, which was within six weeks of his (the Manager's) commencement with the respondent, he received complaints about the claimant from a resident, a member of staff and a third party. He asked the two latter complainants to commit their complaints to writing. He felt he needed to bring the complaints to the Board of Management and get their direction; the next board meeting was to be on 20 March 2006. On the claimant's return from leave the Manager had an unscheduled supervision session with him on 1 March 2006. At this supervision session he raised with the claimant the complaints that had been made about him. He later provided the claimant with a written list of these complaints. The Manager was perplexed at the claimant's refusal to prepare the medication and dispensing chart. The next planned supervision was for 7 March 2006. However, subsequent to the supervision session, the claimant went on certified sick leave with a chest infection and resigned on 16 March 2006 four days before the board meeting was due to take place. This left the board and himself in the position of not being able to discuss the concerns/issues because the claimant was no longer an employee.

A major review involving staff and users giving a balanced view of the operation was carried out in 2006. The board members and staff came together and discussed concerns and changes. Changes were coming on stream for the past number of years and the organisation constantly reviewed matters. The review was a different approach to homelessness. The staff had vast experience and the whole process was to raise a person's self esteem.

In cross-examination when asked if the board ignored the detailed submission that the claimant had furnished the Manager responded that the Board of Management is there to govern. He accepted that a breakdown had occurred between the parties but it was difficult for him to comment on it because he was not there when it occurred. He had asked the claimant to review the respondent's drugs administration policy. He could not say whether the claimant's submissions or concerns were going to be on the agenda for the 20 March meeting; he envisaged that if the claimant had not resigned his concerns would have been raised.

He thought it strange that he should get three complaints about the claimant when he was only a few weeks in the position. He could not fathom out why issues like this were brought up and he was unsure of their validity. Detoxification is over a period of twelve weeks and not just a couple of hours, residents need to get away from drink. The respondent did not deal with addiction issues

and did not distribute methadone. He probably saw the claimant's statement for the first time in February 2006. The claimant had asked if he should present it to the board and he told the claimant there was a review being undertaken and it could go in as part of the review. It had been sent to the board in December 2005.

In answer to questions from the Tribunal he recalled that the claimant was very passionate and energetic about his job. There was no attempt to speak to the claimant after he had submitted his resignation because he was on sick leave at the time and his letter of resignation was quite clear. He spoke to the claimant about the review. People had concerns about the dry/wet house.

The respondent's Chairman told the Tribunal that he did not have a hands-on role in the running of the centre. His main function was to put policies and conditions of service in place and to raise funds for the centre. The respondent had to fight for funding every year. It had sustained financial loss in 2005 and had no assets other than a leasehold interest in the premises for as long as the centre remains a refuge for the homeless. The board is entirely voluntary and all the funding was spent on the care of residents and staff wages. There was no manager in the centre for around three or four months following FA's resignation and the witness asked the claimant and another social care worker to step in as acting managers for alternate periods. He received calls from both of them regarding admissions. There was no change to the admission policy as far as he was concerned. He told them that he did not want anyone dying on the street. There was a difference between someone being under the influence of drink and having drink taken.

He received two to three telephone calls from a trade union representative, who was very aggressive. He told her that the admission policy was under review but they were awaiting the appointment of a manager so he could have an input into it. He told the union representative that he was not prepared to discuss the matter further with her. He was aware that there were discussions about a policy change at the meeting held in September 2005 but it had not come to the board; he remembered receiving a draft admission policy but could not remember from whom; he may have got it from the homeless forum. The draft policy never came to the board for approval. He had a vague recollection of giving this policy to FA. The admission policy was looked at every few years.

The claimant asked him if he could address the board at the December 2005 meeting. Whilst there was no policy for such he told the claimant that he would allow him to do so on a once-off basis but he advised the claimant to address it on 30 January 2006 because the December meeting was always a very short meeting dealing with emergency matters. He received the claimant's statement for the meeting of 30 January 2006 at 19.25 on the day, looked through it and decided he was not going to bring it before the board when he had no time to read it. He had a new manager (since 18 January 2006) who could read it and bring to the board what was necessary. One member of the board who flicked through the statement said that many people were named in it and s/he had grave reservations about it. The claimant had resigned before the next board meeting so his statement was never read to the Board. He returned the document to the claimant. The respondent endeavoured to give the best possible care to people who needed it. He resented the implication that he did not act in the best interest of the centre and its users.

In cross-examination the Chairman denied having refused to take the statement from the claimant when he tried to present it to him prior to the 20 December board meeting and insisted that he had received it at 19.25 on 30 January 2006. He accepted that he had directed the claimant on 16 November 2005 to discontinue dispensing medication to residents and that this was a fundamental change to the established practice that had been in place over the previous ten years. The Health

Service had indicated to him that they were dispensing drugs in the centre and that this was in breach of the drugs prescription legislation. Thus, until it was sorted the residents were to be sent to their doctors. The Board and he were concerned about criminality. He told the claimant that dispensing drugs was a criminal offence. He did not consider that SEO's involvement was an interference with the claimant in the carrying out of his duty; SEO had telephoned him about the matter.

Determination

This is a constructive dismissal case. The burden of proof is on the claimant to show that because of the respondent's conduct he was entitled to or it was reasonable for him to terminate his contract of employment with the respondent.

The claimant's former manager (FA) thought highly of him as an employee and had a good working relationship with him during the claimant's nine and a half years with the respondent. Over all those years the claimant had used his discretion in the application of the dry house rules. It was the claimant who had not been informed of any change to the dry house rules and it was the Chairman's evidence that there had not been any such change. However, in light of the events and responses that followed the claimant's discharging of a resident for breaching the dry house rules on or around 26 October 2005 and the eventual overturning of that decision it was reasonable for the claimant to understand that the dry house rules had been changed and that this constituted a material change to his terms and conditions of employment. The claimant himself and his trade union official raised his concerns about this with the respondent but the respondent failed to deal with them in a reasonable or timely manner or to reassure the claimant as to the true status of the dry house rules. The Tribunal feels that a failure by the respondent to fully explicate the dry house rules to its employees may have given rise to a difference of interpretation of the rules between the parties.

The claimant's opposition to the Chairman's instruction to make the residents responsible for their own medication was reasonable in light of the potential risks that could ensue to the residents. The claimant's endeavours along with those of others succeeded in having the instruction reversed.

The Tribunal finds that it was reasonable for the claimant to be concerned about the whole issue of the alleged complaints made against him in February 2006. The claimant was concerned about the fact that for the first time in his long service with the respondent a number of complaints were made against him during his two-week absence on annual leave. This concern was compounded by the unfair and unsatisfactory manner in which the respondent dealt with these complaints, including the failure by both the Chairman and Manager to respond to his letter of 4 March 2006.

In light of the totality of the evidence and in particular in light of the respondent's conduct as outlined above, the Tribunal unanimously finds that it was reasonable for the claimant to terminate his employment with the respondent. Accordingly, the claim under the Unfair Dismissals Act, 1977 to 2001 succeeds.

Section 7 of the Unfair Dismissals Act, 1977 as amended provides for compensation for the loss attributable to the dismissal; however, subsection (2) (c) qualifies this by requiring the claimant to mitigate his loss. Having regard to this requirement the Tribunal feels that at some stage during the year following his dismissal the claimant could have found and engaged in some alternative work pending the finding of a position in his field of qualification and experience. Having taken this failure to mitigate his loss into account the Tribunal awards the claimant compensation in the sum

of €22,500 under the Unfair Dismissals Acts, 1977 to 2001.

Because this is a claim for constructive dismissal the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

