

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

CASE NO.

UD516/07

MN373/07

Against

2 Employers

Under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr. D. Winston
Mr. N. Broughall

heard this claim at Naas on 5th March, 2008.

Representation:

Claimant : Ms Eithne Leahy B.L., instructed by Mr. Matt Mulvey, Mulvey Kenny & Co.,
Solicitors, College Street, Carlow.

Respondent : Mr. Tom O'Grady, IBEC, 84-86 Lr. Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant commenced employment on 3rd July 2003 as a General Operative. His duties included baling products, trouble shooting and ensuring the smooth running of the baler machine. Upon commencement he completed a manual handling course and a course on fixing the machine. He trained other colleagues on how to bale the products. He received his contract of employment and reported to his supervisor.

His work was physically demanding. The machine continually broke down. On one occasion when this happened, the Operations Manager asked him why he could not get the machine up and

running again as he had been in the job a long time. He asked him if he needed more training. The Operations Manager shouted at him and he felt very upset and belittled and especially so as this happened in the presence of other colleagues. He felt the engineer should fix the machine. The shouting and bullying continued.

When the claimant's supervisor told him he should think about his position he perceived this as a threat. On another occasion the Operations Manager called him a child and said he wanted a handy number.

On 8th February 2007 he complained of back pain and he was sent to hospital for an x-ray. He returned to work that day and was sent home. He felt his employer did not take him seriously.

After his resignation of 19th February 2007 he declined to attend a meeting with management. He had had enough and was stressed out. He was unaware of the rehabilitation process in the company.

The claimant established loss for the Tribunal.

Under cross-examination the claimant said he did not avail of the grievance procedures because he did not want to make a big deal. He explained that the machine broke down several times each day and that he would have to call an engineer. He was constantly being shouted at by the Operations Manager and his supervisor and he felt there was not need for this. He explained that two men should operate the machine but most of the time he worked alone.

Respondent's Case

The Operations Manager gave evidence. He reported to the General Manager. Thirty people were employed and they were divided into two shifts. When the company employed him he became aware of the baler machine stopping up to seventy times daily. This consisted of jams and open flaps on boxes. An Action Team was set up with a view to improving faults in the machinery and the Team first met in late September 2006. Six people including the claimant became part of the team. Great progress was made and the stopping of the machine reduced from seventy stops to thirty stops. The claimant's impact on the team was valuable.

The Operations Manager said the environment where the claimant worked was extremely noisy and staff had to raise their voices to be heard. Staff wore either earplugs or earmuffs on the plant.

When the Operations Manager became aware of the claimant's back trouble and chest pains he spoke to the claimant's supervisor to make arrangements for the claimant to be taken to the hospital for an x-ray. The claimant returned to work with a medical certificate. The company's rehabilitation programme was discussed with the claimant whereby the claimant could do other work and also an appointment was arranged for the claimant with the company doctor regarding his chest pains.

The following week the company nurse informed the respondent that the claimant was fit to return to normal duties on the baler machine but the claimant refused to do so and was sent to the topping department. Subsequently the claimant attended a meeting with the Operations Manager, his SRG representative and his supervisor. It was arranged the claimant would not work on the baler machine for the next four to eight weeks but would assist another employee in the event of the baler breaking down. The claimant was happy with this arrangement.

On 19th February 2007, the Operations Manager received a phone call from the claimant saying that

he was finishing up. He offered to meet the claimant at 10 o'clock the following day but the claimant failed to meet him. He tried phoning the claimant several times over the following days but was unsuccessful in speaking to him.

Under cross-examination the Operations Manager said he was very understanding of the claimant's back problem and he moved him to lighter duties where he had no exposure to the baler machine. He was unaware of the claimant making any complaint against him. He never called the claimant a child.

The claimant's supervisor gave evidence. He knew the claimant very well. He never threatened the claimant. He may have raised his voice on occasion because of the noise in the plant. He was responsible for the claimant's safety. If he felt at any stage he offended the claimant he was apologetic.

Determination:

The claimant was making a claim for constructive dismissal, therefore the onus was on him to establish that it was impossible for him to continue in the employment. On the day his employment ended, the claimant did not invoke the respondent's grievance procedures or avail of the offer of a meeting with the Operations Manager. The Tribunal is satisfied that the claimant had other avenues of action open to him other than resignation. The Tribunal finds that the claimant was not constructively dismissed and accordingly his claim under the Unfair Dismissals Acts, 1977 to 2001 fails. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2003 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

