

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.
UD410/2007

Employer

against the recommendation of the Rights Commissioner in the case of:
Employee

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

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

Members: Mr. G. Phelan
Dr. A. Clune

heard this appeal at Limerick on 27th February 2008

Representation:

Appellant: In person

Respondent: Mr. Ger Kennedy, No. 1 Branch, SIPTU, 4 Church Street., St. John's
Square Limerick

This case came before the Tribunal by way of an appeal by the employer against the recommendation of the Rights Commissioner r-46274-ud-06/MR in the case of Employee –v- Employer under the Unfair Dismissals Acts 1977 to 2001.

The appellant herein is referred to as the employer and the respondent is referred to as the employee.

The Evidence

The employer's head office is in Dublin and the employee worked directly from a branch office in Limerick. The employee worked for the employer as a fitter, fitting windscreens to trucks. In September 2005 he sustained an injury at work and was absent for some months. He returned to work in January 2006, but shortly afterwards sustained an aggravating injury at work and was absent from February 2006. During

his brief return to work the employee felt aggrieved on a number of grounds: he felt over-supervised for someone of his experience; a bonus which he felt was due to him was not paid; he did not retain use of the company van to drive to and from work as had been the case prior to his absence; and he did not receive a pay increase which he felt he was due. There was a conflict of evidence with regard to what occurred from February 2006. The employee said in evidence that he sent fortnightly medical certificates to his employer at the local branch office in Limerick. However, the employer told the Tribunal that they never received them at head office in Dublin. The employee received payments for occupational injury benefit from the Department of Social and Family Affairs. In order for him to receive this, the employer had to confirm to the Department of Social Welfare and Family Affairs that the employee was absent due to an injury, which they did. In April 2006 the employee's manager in Limerick wrote to him saying he had not received any medical certificates and asking the employee to get in touch. However, the employee, due to his lack of income, had moved address and did not receive this letter. In July 2006 the employee was fit to return to work and presented himself at the branch office in Limerick. He spoke to the manager there and gave him a final medical certificate, confirming that he was now fit for work. He also told his manager that he was unwilling to return to work until such a time as the issues, which had arisen following his previous return to work, and which still concerned him, were addressed and he asked to have 'a chat' about them. The employee's evidence was that his manager agreed that he would deal with his concerns and would 'give him a ring'. The employer said that no such certificate was ever received by the employer. The owner of the company told the Tribunal that as far as he could recall the employee's manager mentioned at a manager's meeting that the employee had issues. When his manager did not 'phone him, the employee asked his union representative in SIPTU to write to the company. The employer acknowledged that they received a letter, addressed to the respondent's general manager dated 14th July 2006, from the trade union representative seeking a meeting to address the employee's issues and stating that the employee would not return to work until these matters were addressed. However, the employer did not respond to this. There was a conflict of evidence about what happened next. The employee told the Tribunal that, when this letter was not acknowledged, he wrote to the company himself two weeks later, asking to have his issues addressed and stating that he would otherwise have "no other option but to take the matter further". The employer told the Tribunal that they did not receive this letter. When the employee did not receive a response to this letter, he wrote again two weeks later, saying he now considered himself constructively dismissed by the employer. The employer told the Tribunal they did not receive this letter either. Both of these letters were addressed to "To Whom It Concerns".

The employer did not appear at the Rights Commissioner's hearing of the claim but had written to inform the Labour Relations Commission that he would not be in attendance because the employee was still in his employment.

Determination

Having considered the evidence the Tribunal accepts the employee's evidence as to what happened at the meeting between the manager and claimant in July. However, subsequent to that meeting the employer did not contact the employee. Further

attempts were made by both the employee's trade union representative and later by the employee himself to seek a meeting to address the employee's issues but their efforts failed to elicit a response from the employer. In the circumstances the Tribunal finds that it was reasonable for the claimant to resign and consider that he had been constructively dismissed. Accordingly, the appeal against the recommendation of the Rights Commissioner fails. The Tribunal upholds the recommendation of the Rights Commissioner under the Unfair Dismissals Acts 1977 to 2001 as to both the substantive issue and the award of the sum of €3,000 (say three thousand euro) in compensation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)