

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NOS.
UD737/2007
MN597/2007
WT256/2007

Against

Employer

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Mac Carthy S C

Members: Mr D. Moore
Ms M. Finnerty

heard this claim at Dublin on 20th December 2007 and 4th March and 5th March 2008

Representation:

Claimant : In person

Respondent : Mr Tom Mallon B L instructed by
Arthur Cox, Solicitors, Earlsfort Centre, Earlsfort Terrace, Dublin 2

The determination of the Tribunal was as follows:

Since the respondent did not accept it dismissed the claimant it followed that dismissal was in dispute and the claimant alleged constructive dismissal.

The issue of a time limit over the claimant's application under the Unfair Dismissals Acts was raised. After some debate counsel for the respondent accepted that the date of termination was 22nd February 2007, therefore the time limit did not arise.

Claimant's Case

The claimant gave evidence. He detailed his medical history both before and during his employment. He sustained a fracture to his skull in 1991, and suffered continual repercussions. He also told the Tribunal that he was involved in a road accident that caused ongoing problems. After he began working for the respondent his health problems continued. These caused him to be absent from work for lengthy periods.

Towards the end of 2004 the claimant was absent from work for reasons relating to transport.

The claimant was admitted to hospital on 3rd January 2006 and did not return to work until October 2006, when he worked for a short period. On 1st September 2006, there was a disciplinary meeting, where the respondent raised the issues of the claimant's compliance with company's Harassment, Bullying and Inappropriate Behaviour Policy and his compliance with the Sickness and Absence Policy. A warning letter issued to the claimant on 5th October 2006.

In the meantime the OHC physician for the respondent considered him fit for work but his own doctor continued to certify him unfit for work. Issues arose between the claimant and the OHC physician.

During the period of his return to work the claimant was unhappy about the layout of the boxes and shelves in the area where he worked. He did not return to work again.

The claimant told the Tribunal that over the Christmas period he made a decision to leave the company.

A further disciplinary meeting was arranged for 19th January 2007 to address questions under the Sickness & Absence Policy. On that day the claimant handed in his letter of resignation, effective as of 22nd February 2007, saying that *'it was impossible and impractical that I should continue'*.

Respondent's Case

The respondent's case was that the claimant chose to resign and that they did not dismiss him. Disciplinary action was taken against him because they said that he failed to comply with the Sickness & Absence Policy and also failed to cooperate with the OHC physician.

When he was called to a second disciplinary meeting the claimant resigned rather than go through with the hearing.

Determination

Having reviewed all the evidence the Tribunal finds that the claimant was given the opportunity to put his case at the disciplinary meeting of 19th January 2007, but the claimant pre-empted the disciplinary process by resigning. Indeed the claimant admitted in evidence that he decided over the Christmas period to resign.

In any event the claimant suffered no financial loss, from the termination of his employment. He told the Tribunal on several occasions that he was and remained unfit for work.

Notice does not arise because the claimant resigned. The Tribunal finds that the claimant does not

have any outstanding holiday entitlement.

The claims under the Unfair Dismissals Acts, 1977 to 2001; the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and the Organisation of Working Time Act, 1997 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)