

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

Employee

UD137/2007

MN93/2007

WT33/2007

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: Ms. P. McGrath B.L.

Members: Mr. R. Murphy  
Mr. P. Trehy

heard this appeal at Mullingar on 28 March and 23 September 2008

**Representation:**

Claimant:

Mr. Stephen Byrne B.L. instructed by  
Ms. Shelley Leonard, Larkin Tynan & Co. Solicitors,  
Blackhall Street, Mullingar, Co. Westmeath

Respondent:

Mr. Alex White B.L. instructed by  
Ms. Janice Walsh, BCM Hanby Wallace,  
88 Harcourt Street, Dublin 2

The determination of the Tribunal was as follows:

This being a claim of constructive dismissal it fell to the claimant to prove his case.

The claimant was employed from 18 July 2005 as a supervisor in the low risk area (LRA) of the respondent's food preparation plant. His appointment followed two interviews, the first conducted by the operations manager (OM), the second by OM and the managing director (MD). OM was dismissed in August 2005. The claimant's position is that from that time he and the despatch supervisor had to work out the production schedule in the absence of any sales forecasts from the sales manager (SM). This resulted in his hours of work increasing, a situation that he brought to the attention of MD on a number of occasions without any response save for complaints of overtime spiralling out of control. The respondent's position is that this was not brought to MD's attention.

In October 2005 the claimant was promoted to the post of production manager at a significant increase in salary. In neither post was the claimant furnished with a written contract, terms and conditions or disciplinary and grievance procedures. The claimant's position is that more and more problems landed at his doorstep. As he had turned around the position of LRA supervisor after finding his feet he felt that the same would happen in the new position but it never did. He was required to work excessive hours on an ongoing basis throughout the remainder of the employment. He complained of after hours telephone calls from MD at least twice a week. The respondent's position is that the claimant was not required to work excessive hours on an ongoing basis and further that he never complained about his hours of work. Their position on the out of hours phone calls is that there were maybe half a dozen such calls during the claimant's employment.

The respondent utilised the services of two production consultants during the claimant's employment, the claimant found the first of these (C1) to be an imposing presence, the second (C2) the claimant found to be helpful and supportive.

Shortly after Christmas 2005 the claimant was involved in a heated telephone conversation with MD over the claimant's difficulty in contacting maintenance personnel in regard to an issue in the plant requiring attention. The claimant complained of his treatment by the respondent in the strongest terms. The claimant's position is that nothing changed as a result of his complaints despite MD saying it would. He felt under pressure as all problems landed on his door and the situation was beginning to affect his home life. C2 assisted him in putting structures in place and this made the claimant feel that there was light at the end of the tunnel but in the end these structures were not adhered to.

In March 2006 after C2's involvement had ended SM was appointed as general manager. The claimant met MD on 13 March 2006 for what was described as their first 1:1 meeting, whilst the notes of the meeting do not reflect this it is common case that MD offered, and the claimant refused, a financial incentive to cope with the extra demands being placed on the claimant. Following an incident in April 2006, when an incident arose after SM altered the roster at short notice in early April 2006 and told the claimant he had to work on a new product line over a weekend which he was planning to spend in Dublin, the claimant asked MD if this meant that his position as production manager was being undermined. The claimant felt that if he didn't comply with SM there would have been a vendetta against him. Whilst there were no formal arrangements in the respondent for the arranging of leave the claimant's position was that he had recorded this some months previously in the office diary on-line.

The claimant took two weeks' annual leave in late May 2006 thinking that the break would do him good and that he would be refreshed on his return to work. This was not the case as when he returned from annual leave the plant was in a shambles with his production plan not having been followed and order service levels, that is the fulfilment of orders had dropped to an unacceptable level. On 22 June 2006 the claimant visited his GP complaining of dreading going to work and lack of sleep. The claimant was certified sick for the next two weeks and led the management team to believe that he had a stomach virus. When the claimant returned to work on 10 July 2006 MD enquired how the claimant was coping with the stress of being at work, a remark which the claimant laughed off. A meeting was held between the claimant, MD, SM and the financial controller (FC) at which the claimant's absence from work was discussed, including a trip to the UK which was planned well in advance and resulted in a similar argument to the one in April 2006. The claimant's position is that this meeting was on 18 July 2006; the respondent's position is that the meeting was on 10 July 2006 and that the claimant never returned to work after that day. At the meeting the claimant explained that his absence had been due to stress. FC suggested to the

claimant that he might consider carrying out the duties as a supervisor for a time, the claimant's position is that this was meant to be a demotion whereas the respondent's position is that it was an attempt to assist the claimant to overcome his difficulties, was in no way meant as a demotion and there was no question of any reduction in pay. The claimant remained on sick leave until 17 October 2006 when he submitted his resignation in an email to MD.

**Determination:**

The Tribunal has carefully considered the evidence adduced in the course of this lengthy two-day hearing. The onus is on the claimant to prove that a case of constructive dismissal existed. To be satisfied of this the Tribunal must be shown that it was reasonable, in all the circumstances that the claimant hand in his resignation.

There were many allegations made concerning the claimant's employment and the Tribunal does not doubt that the respondent failed to have due regard for the obvious pressures being experienced by the claimant. The claimant had been promoted in circumstances where his enthusiasm was being rewarded but where his experience and capabilities may not have been adequate. No contract of employment was given and the tasks and jobs, which the claimant was expected to carry out, became a burden. Unfortunately the claimant failed to call a halt to the situation and one of the chief difficulties of the claimant's case was that he never formally made any complaint. It is clear that the claimant was put under extreme pressure and that he worked long hours. However there was some exaggeration of these issues.

Ultimately the Tribunal accepts that there was a constructive dismissal insofar as the claimant could not reasonably be expected to do anything other than terminate his employment. However in assessing loss the Tribunal must take into account that the respondent was not afforded an opportunity to put its house in order whilst the claimant was still its employee. The tribunal therefore awards €15,000-00 under the Unfair Dismissals Acts, 1977 to 2001. This being a claim of constructive dismissal a claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 does not arise. No specific evidence having been adduced the claim under the Organisation of Working Time Act, 1997 must fail.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)