

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

UD86/2008

MN68/2008

WT46/2008

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. N. O'Carroll-Kelly B.L.

Members: Mr. B. Kealy
Mr. J. Maher

heard this appeal at Dublin on 15 May
and 9 July 2008

Representation:

Claimant:

Mr. Conor Bowman B.L. instructed by Ms. Aoife Raftery,
Sean Costello & Co. Solicitors, Halliday House,
32 Arran Quay, Dublin 7

Respondent:

Mr. Tim O'Connell, IBEC Confederation House,
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

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

The claimant was employed from April 2000 in the respondent's plant, which produces electronic security equipment. From 2003 the claimant became a team leader of a cell of five employees. The employment was uneventful until early 2005 when the claimant asserted that he began to have problems with his supervisor (HS). HS became the claimant's supervisor in late 2004. When the claimant returned from a week's annual leave in February 2005 he was moved to a new cell which

had been set up whilst he was on leave. The claimant found work difficult in the new cell, he complained of lack of training for him which meant that he was unable to train his fellow cell members effectively in the manufacture of the new product. The claimant felt his job was impossible to do and that this was added to by his being subject to constant hostile and intimidating behaviour from HS, in particular, that impossible targets were set for the cell. He felt that HS was undermining him in front of his team. In the early summer of 2005 when the claimant was moved back to his previous cell he felt HS's behaviour towards him was sarcastic and rude on a daily basis. He felt inadequate and had lost his self-confidence and dignity.

The claimant detailed an incident where after requesting holidays from HS he was told by HS to raise it her nearer the time as she was too busy. The claimant was later refused only for a colleague to be given the holidays he was seeking even though the request was made after his one. In October 2005 a new supervisor (NS) was appointed and the claimant decided to seek a transfer to another section, he approached NS about signing the necessary transfer request form but HS intervened and insisted she had to sign it and then was too busy to sign it. The claimant approached the company director (CD) about the matter and a few minutes later HS complained about his approaching CD and adding that he couldn't transfer, as he had not fulfilled his role as team leader. The claimant complained to his union representative (UR) about the matter.

On 9 January 2006 NS asked the claimant to organise for the cell members to work overtime for later that week. This was arranged for Tuesday, Wednesday and Thursday evenings with the claimant not doing Thursday overtime due to a pre-existing commitment. NS became angry with him about this and the fact that no one was doing overtime on Saturday. There was also an argument about a checklist of damaged equipment the claimant was asked to produce. On the morning when the claimant gave the list to NS she ignored it and then admonished him that afternoon for not having produced it. There was a problem with the work produced on overtime on Thursday 12 January 2006 and on Friday 13 January 2006 NS told the claimant that she held him responsible for the problem even though he had not been there. NS had said his performance was not good enough and she told the claimant that she would be expecting his resignation as team leader on Monday 16 January 2006. On that day the claimant approached NS to say that he would not be resigning as team leader and NS said "Human Resources will be dealing with you later". At that point the claimant became upset and left the premises.

A human resource office (HRO) wrote to the claimant on 16 January 2006 to point out that walking off site was a serious matter and he was requested to report to HRO the next morning. The claimant was then absent on sick leave suffering from stress and depression until March 2007. On 29 March 2006, following a visit by the claimant to the occupational health nurse (OHN), HRO wrote to the claimant to seek an informal meeting to discuss the report from OHN. The claimant met the human resource manager (HR) in a local hotel in early April 2006. On 13 April 2006 following that meeting HR wrote to the claimant to confirm that she was unable to take action in regard to the concerns, including which cell he might work in, he had voiced until he returned to work. The claimant did not respond to this letter so on 2 May 2006 HR wrote to the claimant having arranged for him to visit a doctor nominated by the respondent. The claimant replied on 4 May 2006 to state that he was not ready to return to work and that he was unable to keep the appointment arranged for him with the doctor. On 16 May 2006 HR wrote to the claimant to request him to contact the doctor before 19 May 2006. HR also reminded the claimant that, as he had been previously told, his position could only be kept open for a certain length of time.

In a letter received by the respondent on 28 June 2006 the claimant wrote to HR to complain that he had been bullied harassed and humiliated by HS since February 2005. He asked that he be paid

whilst on sick leave. HR replied on 18 July 2006 and enclosed a copy of the respondent's grievance and anti-bullying policies. She nominated a human resource generalist (HRG) to conduct an enquiry into his complaints. This was conditional on the claimant setting out his complaints in writing as provided in the grievance policy. The request for sick pay was declined. Later in July 2006 the claimant wrote to HR to express his disappointment that he was still required to put his complaints in detail in writing. HR replied on 14 August 2008 to emphasise the need for the written detail of his complaints. He was asked to provide this by 28 August 2006. Having received no reply HR wrote again on 12 September 2006, setting a new deadline of 28 September 2006. On 6 October 2006 the respondent received a reply from the claimant that included a seven-page document detailing his complaints. HR acknowledged receipt of this document on 10 October 2006 and repeated that HRG would conduct the investigation of his complaints.

HRG wrote to the claimant on 10 November 2006 to state that the investigation into his complaints was complete; she had spoken to both HS and NS and now wanted to arrange a time to meet the claimant in person. He was asked to contact HRG by 17 November 2006 in order to arrange a meeting with her. He was also asked to provide certification from his own doctor that he was fit to return to work. The claimant replied at the end of that month seeking clarification on the procedure to be adopted by HRG. On 4 December 2006 HRG wrote to the claimant again pointing out that he was expected to attend a grievance meeting as requested by the respondent in line with their grievance policy. As he had refused three requests to attend such meetings it was the respondent's conclusion that the claimant was not co-operating with the resolution of his complaint. He was requested to attend a grievance meeting on 12 December 2006 and attend the company doctor two days later. Having attended the grievance meeting with HRG on 12 December 2006 the claimant was then requested to attend on 20 December 2006 to discuss his grievances individually with both HS and NS. These meetings were then postponed to 4 January 2007. The claimant attended the company doctor on 14 December 2006.

At the meetings on 4 January 2007 both HS and NS stated it was not their intention to upset the claimant in any way. HRG wrote to the claimant on 11 January 2007 to say that the complaint would not be pursued any further. HRG believed the issues had been resolved in an amicable manner. As the company doctor had declared him fit to return to work and he was to return to work on 22 January 2007 where he would be primarily allocated to a different supervisor (DS). He was to report to OHN on 23 January 2007. The claimant felt unable to return to work, as it could not be guaranteed that he would not have to work with either HS or NS. He remained away from work until submitting his resignation on 30 November 2007.

Determination:

The respondent first became aware that there were problems with the claimant's employment when he left the premises on 16 January 2006. HRO wrote to him on that day to point out that leaving the premises in that manner was a serious matter. The medical certificates submitted by the claimant made it clear that he was suffering from stress or depression. HRO took part in an informal meeting with the claimant at which the difficulties the claimant was facing were raised. The respondent was initially not prepared to conduct an investigation into the complaints until the claimant returned to work. No formal investigation into the complaints was begun until the claimant submitted his detailed complaint on 6 October 2006. HRG then conducted an enquiry

into the complaints. The claimant was never given a copy of the responses of HS and NS to his allegations. After the meetings between the claimant and HS and NS, at which they both stated it was not their intention to upset the claimant in any way, HRG wrote to the claimant to say that the complaint would not be pursued any further as she believed the issues had been resolved in an amicable manner. This was patently not the case and the respondent never adequately dealt with the complaints. The Tribunal notes that, as neither HS nor NS gave evidence, the claimant's evidence about the treatment he alleges he suffered is uncontroverted. For all these reasons the Tribunal is satisfied that the claim of constructive dismissal must succeed. Having considered that the claimant had a considerable contribution to the predicament in which he found himself the Tribunal measures the award under the Unfair Dismissals Acts, 1977 to 2001 at €7,500-00. 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 evidence having been adduced in this regard the claim under the Organisation of Working Time Act, 1997 must fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)