

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

RP833/2008

UD962/2008

MN903/2008

against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Mr D. Hegarty
Mr D. McEvoy

heard this claim at Cork on 1st April 2009

Representation:

Claimant(s) : Mr Noel Murphy, IWU, 55 North Main Street, Cork

Respondent(s) : Mr. John Boylan, McNulty Boylan & Partners, Solicitors, 26/28 South Terrace,
Cork

The determination of the Tribunal was as follows:-

The claims under the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment acts, 1973 to 2005 were dismissed.

This matter comes before the Tribunal by way of a claim under the provisions of the Unfair Dismissal Act by virtue of which the Claimant claims to have been constructively dismissed from his employment with the Respondent on the 10th of March 2008.

The Claimant gave evidence on his own behalf. He described that he commenced work with the Respondent in March 2003 and had become the Assistant Manager of the Respondent's shop in Washington Street and was working in that capacity at the time of his dismissal. In March 2003 the shop Manager was absent on vacation and the Claimant was obliged to attend a meeting with the Operations Manager on the morning of the 10th of March.

He had been experiencing difficulties with the printer attached to his computer and was unable to print the necessary reports for the meeting on the Monday morning. He had been working until the early hours of Sunday night and he felt that when he attended the management meeting on Monday morning that the Operations Manager shouted at him and was abusive to him. He described that he felt intimidated. This was the culmination of a number of issues which he indicated created a situation whereby he could not continue to work for the Respondent and was compelled to give up his job. The other issues that arose related to inconsistency in relation to the payment of bonus, the fact that he was expected to work excessive hours in respect of which he was not paid overtime and

that they had failed to carry out any investigation into a complaint that he had made of bullying against a fellow employee.

After the meeting on the 3rd of March he left his employment as he felt that he could not be expected to continue in his employment having regard to these issues.

Evidence on behalf of the Respondent was given by the Store Manager and the Operations Manager. The Store Manager indicated that after the Claimant had walked out that he had a meeting with him and at that meeting he had told the Claimant that if he apologised to the Operations Manager he could come back to work. The Claimant declined.

The Operations Manager gave evidence of the meeting of the 10th of March 2008 and said that she felt that the Claimant was very agitated before the meeting and when she had expressed her disappointment that the necessary reports were not available that he had become more agitated and abusive to her and walked out of the meeting. She was upset by the exchanges to the extent that she told one of her colleagues to lock the premises as she did not want the Claimant to come back into the premises in his agitated state.

She gave evidence that the Claimant would have been welcomed back to his job if he had indicated that he wished to come back and that she would have expected an apology for the words that he had used to her at the meeting. She had authorised the Store Manager to convey that to him.

Determination

The Claimant in this case claims to have been constructively dismissed by virtue of the actions of his employers. Section 1 (b) of the Unfair Dismissals Act 1977 provides that dismissal includes *“the termination by the employee of his contract of employment with his employer in circumstances in which because of the conduct of the employer the employee was or would have been entitled, or it was or would have been reasonable for the employee, to terminate the contact of employment.”*

It would appear to this Division of the Tribunal therefore that it must be satisfied that the employee is either entitled; or is acting reasonably in terminating the contract. In order for an employee to meet either of these criteria the conduct referred to in the Act cannot be petty or minor but must be something serious or significant which goes to the root of the relationship between the employer and the employee. Consequently the Tribunal must look at the conduct of the employer and the reasonableness of the resignation by the employee.

Having regard to the foregoing In all the circumstances in this case the Claimant has not satisfied the Tribunal that he has reached the necessary standard of proof to justify his claim for constructive dismissal and in the circumstances the claim is disallowed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)