

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee
–**Claimant**

UD1572/2008
MN876/2008

against

Employer - **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1967 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr. P. Pierson
Mr. P. Clarke

heard this appeal at Roscommon on 15 January
and Ballaghaderreen on 29 June 2009

Representation:

Claimant: Mr. Michael McDarby on the first day,
Ms. Fiona McAllister on the second day,
both of Michael McDarby & Co. Solicitors,
Glebe Street, Ballinrobe, Co. Mayo

Respondent:
Mr. Brian Morgan, Morgan McManus Solicitors,
The Diamond, Clones, Co. Monaghan

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 respondent operates a freight distribution business and the claimant was employed as one of six delivery drivers operating from the respondent's Knock depot from 1 November 2005. The respondent drove a 7.5 tonne truck and was involved in loading the truck before commencing his delivery run. The claimant was paid 45 hours per week. He was required to take a one-hour lunch break in order to comply with the requirements of the Transport Acts. In practice the claimant's job was structured so that once his deliveries were complete and the truck returned to the depot his working day was over.

The claimant's position was that he had issues with the depot manager (DM), who was appointed to his position a few weeks after the claimant began working for the respondent. The claimant felt that he was unfairly picked on for extra work in comparison to his colleagues. This was exacerbated

from late 2007 when the depot moved from Knock to Ballaghaderreen. Around the same time as this there was an alteration to the delivery of overnight freight from the UK, which was changed from airfreight to ferry based. This resulted in some consignments, which had previously gone out in the morning, having to be delivered in the afternoon due to their later arrival in the depot. The claimant had issues over the way he had been treated in regard to an incident in August 2007 when his car broke down in France while he was on annual leave and the resultant delay of his return home and to work.

The issue that brought matters to a head was when the claimant applied, on 14 March 2008, for two weeks annual leave to be taken in September 2008. The respondent has a policy whereby only one driver from each depot is permitted to take annual leave at any given time. As another driver had already requested holidays for part of the second week requested by the claimant DM refused the application for the second week. The respondent's position is that DM told the claimant of this by telephone on 14 March 2008 and that it was agreed that the claimant would think about it over the weekend. DM left the application form marked refused for week two in the claimant's pigeonhole in the depot for the claimant to pick up on Tuesday morning 18 March 2008 after the public holiday the previous day. The claimant worked normally on 18 and 19 March 2008 but did not turn up for work on 20 March 2008. As a result of his non-attendance that day the regional manager telephoned the claimant and was told that the claimant had a problem with DM. RM reminded the claimant about the respondent's grievance procedure and arranged for the audit manager (AM) who was based in the Ballaghaderreen depot to speak to the claimant and to give him a copy of the grievance procedure. AM requested the claimant to think about his situation and get back to him on 24 March 2008. In the event the claimant resigned on 21 March 2008.

Determination:

Having considered the extensive documentary evidence adduced by the respondent the Tribunal finds that the claimant was not pressured into working excessive hours. The Tribunal accepts that there was a less than harmonious working relationship between the claimant and DM but does not accept that the level of that relationship was such that the claimant could show that the conduct of the respondent was so unreasonable as to justify a claim of constructive dismissal. The issue that brought things to a head was the refusal of annual leave. The Tribunal is satisfied that the refusal was in line with the respondent's policy of which the claimant was aware. Further the claimant had been made aware of the grievance policy if not at the start of the employment, then certainly at their induction that took place as part of the opening of the Ballaghaderreen depot and then by AM on 20 March 2008. The claimant never availed of the grievance procedure at any stage. For all these reasons the claim of constructive dismissal under the Unfair Dismissals Acts, 1977 to 2007 must fail. This being a claim of constructive dismissal a claim under the Minimum Notice and Terms of Employment Acts, 1967 to 2001 does not arise

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)