EMPLOYMENT APPEALS TRIBUNAL

Claims Of:	Case No.
Employee	UD447/2007
	MN316/2007
	WT132/2007

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. K. T. O'Mahony B.L.

Members: Mr. P. Casey
Mr. T. Kennelly

heard this claim at Cork on 1st April 2008 and 26th June 2008 and 27th June 2008

Representation:

Claimant: Ms. Karen O'Driscoll B.L. instructed by Ms. Michele Nunan, O'Donnell Breen-Walsh O'Donoghue, Solicitors, Trinity House, 8 Georges Quay, Cork

Respondent: Mr. Donagh Corcoran, I B E C, Knockrea House, Douglas Road, Cork

The determination of the Tribunal was as follows:

Claimant's Case

The claimant commenced employment with the respondent in March 1998. Initially he worked grinding and polishing products and developed pain in his right shoulder. In 2004 he was moved to the foundry where cobalt alloys and other metal alloys were melted down and poured into moulds. The claimant was working at a bench using a grinding machine to remove the excess material from the product when the mould was broken. Because of the repetitive nature of the work he developed a strain in his neck,

shoulder and down his arm and over time as a result of the dust in the atmosphere he developed breathing difficulties and skin problems and around the time of the events herein was attending the company doctor for these complaints.

In the claimant's performance review in March 2006 for the year 2005 his then supervisor stated: *"[He] has performed consistently over the course of the year and always worked with enthusiasm. [He] is a well-integrated and respected member of the foundry team. His attitude to work is good .... [He] works well with fellow associates and support staff."*

At a general meeting in June 2006 the General Manager informed the employees that a 6% increase in productivity was required throughout the plant and that there would be process improvements to facilitate this. Around this time the claimant's supervisor told him that his output was no longer acceptable and that he must increase it by 25%. The claimant refused to sign a document pertaining to this because his supervisor did not give him any time to consider it. The claimant told his supervisor that he was working "flat out" and reminded him about his health problems. About a week later his supervisor again told him that his output must improve by 25% (20%). The claimant referred again to his medical problems and told his supervisor that this was unfair and bordering on harassment. At this point, his supervisor told him that he would refer the matter to his manager. Some time later the claimant was called to manager's office. The claimant felt that he was being subjected to disciplinary action, which was completely unwarranted and he was very stressed. The manager told the claimant that if he did not increase production by 25% (20%) disciplinary action would be taken and his bonus would be cut. When the claimant reminded the manager about the promised process improvements he told him that these were "a long way off". The manager neither offered him an alternative position nor made any attempt to accommodate his injury.

The claimant felt that he was in an impossible position, his back was to the wall and he had nowhere to turn. He attended his doctor. Her evidence was that the claimant was very stressed and she certified him unfit for work for two weeks, until mid July. The claimant telephoned the Manufacturing Co-ordinator (MCO), his supervisor, and told him he was suffering from work related stress. At the respondent's request the claimant attended a doctor at Employment Health Advisors Ltd. on 20 July 2006 and the Specialist Registrar in Occupational Medicine told him that there was not much she could do. She suggested that he should have some counselling. In her letter to HRL she referred to his having been certified off work with "work related stress" and that he planned to return to work on 31 July. It was her opinion that he would be fit to return at that stage.

On the claimant's return to work, a quality controller observed his work and reported to the company that he was overworking the parts. A trainer, who had also observed his work reported that he was not overworking the parts and that there was nothing wrong with the claimant's work. These conflicting reports added to the claimant's confusion and stress. Because of his breathing problems a doctor on behalf of the respondent referred the claimant to a respiratory consultant.

On 4 August the claimant was issued with a Performance Improvement Plan, requiring him to increase his output by 23 August from 100 to 120 of mbt product.

The plan provided that a failure to achieve this could result in disciplinary action**.** The claimant again told the respondent that he was being harassed and that when the process improvement was made his output would increase. The claimant did not agreewith the respondent that maintenance work on a machine that was giving trouble constituted the promised improvement. On 9 August the claimant returned the signedPerformance Improvement Plan with a covering letter, stating inter alia that his performance was not a disciplinary matter. In the letter he also referred to his work-related medical conditions and complained that management's continuing demands for an increase in his output were causing him considerable stress. The claimant did not receive a response to his letter. A doctor who examined the claimanton behalf of the company agreed that working at a faster pace could exacerbate hisneck and shoulder injury and suggested that he be put on job rotation. The claimantwas put on medication for his skin condition.

On 14 August 2006 the claimant was called to a meeting with MCO and Ms D. MCO told him that his production was to increase from 120 to 144 parts of mbt product per 12 hours over the next few months. The claimant was "flabbergasted". Documentation in relation to the requested increase in production was produced to the Tribunal. In August the claimant presented with more pain across his upper back and neck and his hands were getting weaker. His doctor referred him to a respiratory consultant, dermatologist, and a consultant rheumatologist. The MRI findings werethat the narrowing of the spinal canal and compression of the spinal cord were exacerbated by his work. The claimant was put on medication for his asthma.

In late August, on foot of the medical advice, the claimant was placed on job rotation and around the same time he was issued with a second Performance Improvement Plan. Under the new arrangement the claimant was spending six hours per day in the Inspect and Dress section (on the job he was already performing) and the other six hours in the Bombing (X-ray) section. His production in Inspect and Dress was still expected to increase by 25% and his target in the Bombing area was 25 batches in 6 hours while every other employee there had a lower target of 45-47 batches in 12 hours. He was told that disciplinary action would be initiated if he did not meet the targets. The claimant was working faster and harder and he had to take time off work because of the pain he was suffering.

The claimant had to leave work early on 20 and 26 September 2006 due to pain in his shoulder. He had an MRI on 28 September 2006 and attended a dermatologist on the 2 October 2006. At the request of the company he had a chest X-ray on 9 October 2006. He was absent from work from 4 October 2006 to 17 October 2006. On 11 October a company doctor found the claimant fit to return to work. The new Assistant Foundry Manager telephoned the claimant and informed him that if he did not return to work his sick pay would be cut. On 12 October the claimant was informed that the results of his MRI scan showed bulging of discs in his neck and a narrowing of the spinal canal and he was referred to a consultant neurosurgeon. On 19 October the claimant returned to work. A consultant respiratory physician, who had seen the claimant on behalf of the respondent, confirmed that the claimant had asthma and that his work environment was one of three possible causes of the asthma. His advice was that the claimant should no longer work in the foundry.

On 20 October the claimant's solicitor wrote to the respondent, indicating that a claim for personal injuries would be instituted if the respondent did not admit liability for his personal injuries (asthma, dermatitis, neck, shoulder and forearm pain) and for work-related stress due to the "extreme harassment and intolerable pressure" put on the claimant to increase his output.

On around 23 October 2006 the claimant was moved to Quad 1 and a few days later he was told to report to the Stores and Purchasing Team Leader (TL). He informed TL about his health problems and stress and he assigned him to the repack section in the stores.

Before the claimant developed a medical condition his output was the same as that of other employees. No training had been provided for him in the period between June and August 2006. He requested the respondent to provide him with its training records for the period but they failed to do so. The claimant was not required to wear a mask in work to protect against dust but they were available. He had not been on a safety course on dust.

It was the claimant's evidence that the repack section and in particular the part of it in which he worked was in a very isolated area upstairs. He outlined to the Tribunal that there were two fire alarm signals: one alarm signals that employees should remain on standby but at their posts while the other alarm means that the employees should evacuate. On 9 November 2006 he was alone in the area and, believing a fire signal to be the standby alarm, he did not leave the premises. Because the repack area was noisy and he was wearing noise defenders the claimant found it difficult to distinguish between the two alarms. The claimant had not seen any flashing lights, as a further alert, on 9 November. Employees' difficulty with the intercom system and in distinguishing between the two alarm signals had been raised on a number of occasions with management at information meetings but nothing had been done to rectify the matter. On 9 November and again on 13 November TL questioned the claimant about his failure to leave the premises and on each occasion the claimant explained that he thought it was the standby alarm and assured TL that it would not happen again (as he would go and investigate the matter). During the latter conversation TL gave the claimant a letter from the Human Resources Leader (HRL), asking him to attend a disciplinary investigation interview about his failure to leave the building on 15 November 2006. The claimant could not understand why, if the emergency response team had missed him from the fire assembly line, no one had come looking for him.

Both HRL and TL were present at the interview/meeting of 15 November 2006 and the claimant had a colleague with him. According to the claimant the tone of the meeting was aggressive and he compared it to an interrogation where his two superiors were cutting across one another throwing rapid-fire questions at him and it seemed to him that they did not want to hear his responses. He was accused of gross misconduct for putting people's lives at risk. His superiors alleged that he had received training on fire drill on four occasions but he could only remember fire training on one occasion. The claimant felt that he was being singled out in that otheremployees, who had not swiped out during previous fire drills, had not been disciplined. The claimant requested the respondent's records of previous fire drills and training. The claimant found it very difficult to keep calm at the

meeting and when it ended his representative tried to calm him. He returned to his work area but felt he was suffering a panic attack (he was shaking and finding it hard to breathe) and he was afraid that he would lose his composure. He went to TL's office and reported that he was leaving work because he was not feeling well. On his way home he got physically sick. The claimant's doctor was not available that day but she saw him the following day, 16 November. His doctor's evidence confirmed to the Tribunal that he was in a very distressed state; he had not been sleeping and looked as if he had been crying. She put him back on medication for stress and certified him unfit for work for at least two weeks. When she next saw him, on 22 November, he was anxious about returning to work and she certified him unfit for work until at least 20 December 2006. The claimant posted both certificates to the respondent. When he had failed to leave the premises on a previous occasion in 2004 the issue was not raised but all hell broke loose about the 9 November incident.

On 22 November 2006, the Operations Manager wrote to the claimant about his "unauthorised and unapproved absence" from work from 12.27 p.m. on Wednesday 15 November, reminded him of the notification procedures, informed him that he would not be paid for the unauthorised absence and asked him to make contact. The claimant telephoned the Operations Manager and informed him that he had informed TL on 15 November that he was leaving the premises, that he had submitted two medical certificates and that he would be returning to work on 20 December. On 23 November 2006 the claimant's solicitor wrote to HRL outlining the claimant's account of the meeting, repeated the reason why he had not evacuated the building on 9 November and called on HRL to forward the records, already sought by the claimant to establish the veracity of the claims made by the respondent's representatives at the meeting.

On 28 November TL wrote to the claimant, asking him to see the company doctor on 30 November 2006. Having seen the claimant, the company doctor suggested to the respondent to organise a meeting to resolve matters. On 4 December 2006, TL wrote to the claimant asking him to make contact to arrange a meeting. The claimant felt that he could not handle a meeting with TL at that stage and attended his doctor. It was his doctor's evidence that the claimant was aware that he would have to face his superiors at some stage but he was not up to it at that time. The doctor's certificate to that effect was enclosed with his solicitor's letter of 17 December 2006 to HRL. His solicitor stressed in that letter that: the claimant was not refusing to attend a meeting and invited her, if possible, to conclude the investigation in writing. It was the claimant's case that he did not receive any letter dated 7 December 2006 from TL.

When the claimant returned to work on 21 December 2006 TL reminded him that his absence had been unauthorised and that as a result of a change to the absence policy sick pay was now at his discretion. TL denied having received any medical certificates from the claimant and contacted Human Resources who confirmed to him that medical certificates had not been received from the claimant. The claimant could not understand this because a number of certificates covering his recent absence had been submitted to the respondent and in TL's letter of 28 November, requesting him to attend the company doctor, he had expressly referred

to the claimant's medical certificate of 22 November. TL instructed the claimant to go to the work and not tospeak to anybody. The claimant believed this was done to further isolate him. He hadbeen told on a number of occasions not to speak to people on the floor. It was theclaimant's evidence that TL was very hostile at this meeting and let him know that hewas unhappy to see him. The claimant was on annual leave from 23 December 2006to 8 January 2007. The investigation about the 9 November incident was still hangingover him.

On 22 December 2006 HRL responded to the claimant's solicitor's letter of 23 November 2006 and indicated an intention to continue with the investigation when theclaimant would be in a position to meet with them. In the letter she denied that themeeting of 15 November had been hostile; stated that the claimant had admitted at themeeting on 15 November that he had never raised the issue of not hearing the alarm atmanagement meetings. She also confirmed to the claimant that the respondent accepted that he had notified TL that he was leaving work on 15 November but thatbecause it was an unplanned and not a pre-approved absence from work it was deemed an unauthorised absence and that the claimant had not complied with otherrequirements of the absence policy. The documentation sought by the claimant wasnot enclosed with the letter of 22 December but she outlined that he had safetytraining in June 1998, September 2000, February 2002 and in July and December2003.

On the 27 December 2006 the claimant wrote to HRL requesting records of fire drills, his training records and the entire syllabus or contents of the four Health and Safety Awareness training courses that it was alleged that he had attended and copies of his signature to same. In this letter the claimant indicated that an assurance from the respondent that it accepted that his failure to leave the premises on 9 November was a genuine misunderstanding would help his anxiety about attending a further meeting to conclude the matter.

By letter dated 5 January 2007 HRL informed the claimant that the respondent accepted that his failure to leave the premises on 9 November had been due to a misunderstanding on his part and that the matter was now closed but that they (TL and HRL) had decided that he should have "informal coaching, which does not constitute disciplinary action" and that he would be required to undergo further training on fire evacuation procedures. The respondent's disciplinary procedure provides that coaching is an informal and important step in the disciplinary process. HRL accepted the term "informal coaching" only appears in the respondent's disciplinary procedures. HRL also indicated to the claimant that his letter of 27 December was the first indication she had that he was formally seeking documentation. The letter brought a huge sense of relief to the claimant and he returned to work on 8 January 2007.

On the day of the claimant's return to work TL informed him that further disciplinary action was to be taken against him. The claimant was shocked because only a fewdays previously he had been informed that the fire evacuation issue had been closed. TL told him that the matter had not been closed. On 9 January TL gave the claimant aletter from the Human Resources Generalist (hereinafter HRG) requesting him to attend a disciplinary investigation interview on 10 January with TL and himself to discuss his absence from work: both his level of absenteeism

and his unauthorised absence (his failure to notify the respondent as per the absence policy). He was informed that he could bring a work colleague of his choice. The respondent wasaware that his absence was due to his work-related stress. The claimant felt that hewas not wanted in the company. On the same day the claimant wrote to HRG andinformed him that this development was exacerbating his health problems andrequested the records he had previously sought.

The claimant's work colleague (WC), who attended the meeting of 10 January 2007, confirmed that HRG had told the claimant that the meeting was about his unauthorised absence and that the fire alarm issue was closed but he promised to lookinto the failure to provide documents to the claimant. The meeting was initiallyrelaxed but WC asked for a break when the claimant kept drawing up about the 15November meeting. The meeting resumed but became heated when TL accused theclaimant of having thrown a form at him at the meeting of 15 November and a secondbreak had to be taken. WC persuaded the claimant to return to the meeting to clear therecord (about throwing the form). When the meeting resumed TL retracted theallegation and it was accepted that the claimant had placed the holiday form on thedesk on the 15 November 2006. The meeting was not aggressive as such. Theclaimant was pale and did not look well during the meeting. WC knew the claimantfor eight years and has never known him to be aggressive. WC felt the meeting wentwell and the claimant had nothing to worry about and was surprised when he resigned.

While the claimant described the meeting of 10 January 2007 as less hostile than the earlier meeting in November 2006 and felt that it had been conducted in a fairer manner, he nevertheless had some problems with it. He felt that he should have been allowed to raise the fire evacuation issue and that the fire drill records were relevant because his absence was directly related to the stress caused to him by the respondent's conduct of the meeting on 15 November. When he attempted to question TL about the allegation that he had thrown a document at him at the meeting of 15 November HRG intervened to deflect his questions. While TL retracted this allegation the claimant felt that he was being deliberately undermined.

The claimant was "in a bit of a state" following the meeting. He had never received any documentation on the revised policy from the respondent. He accepted that under the policy the respondent is entitled to talk to an employee about his absences and an employee must contact his team leader every three days. He was so upset during his absence that he did not want to talk to TL. He had not notified his supervisor during his absence in September/October 2006 and could not understand why the respondent was now making an issue about his failure to comply with this aspect of the policy during his absence from 15 November to 20 December 2006. It was his doctor's evidence that when he visited her the following day he was very distressed as a result of the meeting. Because the respondent claimed that medial certificates had not been submitted he felt he was being accused of having been absent for no apparent reason. She diagnosed him to be suffering from stress and depression and prescribed medication for his depression; the claimant had no previous history of depression.

The claimant had been informed that there had been a change to sick policy in August 2006 to the effect that payment was now at the discretion of a worker's supervisor.

Although he had been paid during his earlier absence in September/October 2006 he had not been paid during his absence from 15 November to 21 December 2006. The first confirmation the claimant had that the company had received his medical certificates was at the Tribunal hearing when the respondent's representative stated hehad the original of the one of the claimant's medical certificates
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The claimant sat at home going over and over in his head the events since June 2006 and felt that he could not go back to work. He had lost faith and confidence in the impartiality of the respondent and could not face any more hostility. He took his doctor's advice and decided to resign. On 12 January the claimant wrote a letter of resignation to the respondent setting out in some detail the respondent's treatment of him since June 2006: the alleged continuing harassment about his work output during a time when the respondent was aware that he was suffering from painful medical conditions and work-related stress; subjecting him to a full disciplinary investigation interview for failing to evacuate the premises in response to a fire alarm when this had been due to a misunderstanding and subjecting him to a further disciplinary investigation interview about his absence when the company was well aware that he was ill. Subsequent to his resignation he received some of the records he had been seeking since 15 November. These confirmed that the claimant had been on the premises on 20 December 2004 and had not swiped out.

Respondent's Case

The respondent manufactures human implants. Employees work in a twenty-four hour shift system across three different shifts. They work to an exacting standard. The respondent's processes are constantly reviewed. Engineers work with other personnel to establish a new standard. The trainers in the area test the new standard and if it is achievable then it is implemented for all in the area. Employees are trained to the new standard. It could take between four to six weeks for all employees to reach the new standard. It was the foundry manager's evidence that when a new and better wax was introduced to the casting employees were required to increase output from 108mbts (not 100 as claimed by the claimant) to 120, which is an increase of only 11% and not 25%. According to the manufacturing co-ordinator (MCO) the only increase in output required from the claimant in 2006 was to increase from 108 units to 120 units, but the claimant was not even achieving 108 units per shift. He spoke to the claimant twice in June, explaining the new targets and offered him help and support, which he accepted. The claimant had not been threatened with disciplinary action. However in cross-examination MCO agreed that the claimant had been told that if no improvement was made it could result in disciplinary action. The claimant was issued with two Performance Improvements Plans in August 2006, one on 4 August and the other on 23/24 August. On the doctor's recommendation the claimant was put on job rotation (around the time the second Performance Improvements Plan was issued to him) and he was spending six hours per shift on the old task/job and six hours on a new operation; the new operation was easier because it involved less shoulder movement and was less repetitive. The claimant had not achieved the target in the new operation but MCO was giving him time to up-skill. The Performance Improvement Plan is a coaching process to help an employee who has difficulty reaching targets. The coaching in question was a support rather than a disciplinary process but MCO accepted that this was not explained to the claimant and that he might have understood that it was part of the disciplinary process. The claimant was being monitored daily in order to improve his output. Twenty-two of the twenty-four employees involved were achieving the targets the claimant maintained were unreachable. The claimant had not been subjected to a disciplinary process during the time he worked in the foundry.

Initially, MCO could not recall a meeting he and Ms D had with the claimant on 14 August 2006 and denied that they had required a target of 144 units from him. However, when a document dated 8 August 2006 setting a target of 144 units by 12 November 2006 was produced he accepted that it was the respondent's document and that he must have given it to the claimant. The particular document was directed to all employees and not just the claimant. The document was not adopted by the respondent. He believed that it probably was a communication document. In or around 20 October 2006 the claimant was moved from the foundry to the repack areabecause of his respiratory problems. It was MCO's evidence that his communicationwith the claimant had been informal. He had never been issued either a verbal or written warning. No disciplinary action had been taken against the claimant. MCOhad been aware in August 2006 that the claimant had a shoulder problem. The foundry manager had been aware that the claimant had breathing problems as well asongoing problems with his shoulder in summer 2006 due to the repetitive nature ofjob. They had referred the claimant to the company doctor

It was the respondent's evidence that the standby alarm is intermittent and

the emergency alarm is loud and continuous. The full fire alarm was activated on 9 November and the claimant failed to swipe safe out of the building. Initially it was notknown whether it was an emergency but in the event it turned out not to be. When thebuilding was declared safe TL returned to the repack area and searched for the claimant but could not find him. The records showed that the claimant swiped out ofthe building at 4.00 p.m. The following morning TL raised the issue with the claimantwho told him that he had been confused by the alarm. TL discussed the matter withHRL. Because the failure to observe the fire alarm could have serious consequencesthey had a duty to investigate the matter to establish whether the claimant's failure toevacuate the building was deliberate or a mistake. On 13 November TL gave theclaimant a letter from HRL inviting him to a disciplinary investigation interview on15 November and advising him that he could bring a colleague of his choice.

Both TL and HRL were present at the interview/meeting on 15 November. The claimant told them he had not left the building on 9 November because he was confused by the alarm. TL reminded the claimant that he was aware of the procedure because he had received safety training in 1998, 2000, 2002 and twice in 2003; in aquestionnaire he had answered a question on the difference between the two alarms. It was HRL's evidence that the meeting was difficult. The claimant was angry andcould not see the purpose of the meeting. He told her he would make a note that shewas refusing to give him information (the records he was seeking). HRL told him shewas not refusing to give him the information but that she did not have it with her. Theclaimant maintained that he had raised issue about the fire alarms at meetings withmanagement. The meeting was adjourned to allow TL and HRL to check up on thisand review the matter and the claimant was told that either a clarification or closingoff meeting would be arranged later. In cross-examination TL stated that he had therespondent's records on training with him at the meeting on 15 November but did notgive them to the claimant when he requested them because the investigation had notreached a conclusion at that stage. The records showed that the claimant had left thebuilding on previous drills. TL could not recall having accused the claimant at themeeting of non-compliance with the fire procedures on earlier occasions. He deniedthat "all hell broke loose" because of the claimant's failure to swipe safe on 9 November. While the fire drill records show that the claimant had not swiped safe on20 December 2004 TL believed that the claimant may have been on a different shift.

The claimant was out sick from the afternoon of 15 November and the respondent could not arrange the follow up meeting. The operations manager wrote to him on 22 November about his unauthorised absence from work, reminded him of the notification of absences procedures and asked him to make contact. The claimant contacted the operations manager and asked that he be contacted by post since he did not have a telephone number. On 28 November TL wrote asking the claimant to see the company doctor on 30 November 2006. The doctor suggested to the respondent to organise a meeting to resolve matters.

On 4 December TL wrote to the claimant asking him to make contact to arrange ameeting. It was TL's evidence that he wrote a further letter to the claimant on 7 December 2006 inviting the claimant to a meeting on 14 December. In this letter TLset out the dates when training had been provided, he reminded the claimant

that under the absence policy he must make contact with him every three days, alerted himto the grievance procedure, reminded him of the respondent's Employee Well-BeingProgramme and asked him to make contact. He sent this letter either by taxi or post. As far as he was aware the letter had not been returned

The claimant returned to work on 21 December 2006. An appointment had to be arranged with the company doctor to ensure that he was fit to return to work. The policy requires this in case an employee who has been on sick leave for more than three weeks. The claimant was certified fit to return to work. The respondent did not deal with the claimant's absences at that time because it was close to the Christmas break. TL denied telling the claimant not to speak to others.

On 22 December 2006 HRL responded to the claimant's solicitor's letter of 23 November 2006 and indicated an intention to continue with the investigation when the claimant would be in a position to meet with them. In the letter she denied that the meeting of 15 November had been hostile; stated that the claimant had admitted at the meeting on 15 November that he had never raised the issue of not hearing the alarm at management meetings. She also confirmed to the claimant that the respondent accepted that he (the claimant) had notified TL that he was leaving work on 15 November but that because it was an unplanned and not a pre-approved absence from work it was deemed an unauthorised absence and that the claimant had not complied with other requirements of the absence policy. The letter outlined that he had safety training (induction training) in June 1998 and Environmental and Safety Awareness Training in September 2000, February 2002 and in July and December 2003. A questionnaire he had completed after the latter training showed he understood that he had to leave the building when the full alarm sounds. HRL did not reply to the solicitor's letter of 23 November until 22 December because she would have preferred to deal with the claimant in person. She had intended to give him the documents at the follow-up meeting but the claimant was not available for a meeting.

Following receipt of the claimant's letter of 27 December the respondent felt it had all the relevant information and accepted that the claimant's failure to leave the premises on 9 November had been due to a misunderstanding on his part. RL and TL decided that he should have informal coaching and should undergo further training on fire evacuation procedures. This decision was made in early January 2007 and communicated by way of letter dated 5 January 2007 and he was informed that thematter was now closed. While HRL informed the claimant in the letter that informalcoaching did not constitute disciplinary action she accepted that the respondent's disciplinary procedure provides that coaching is an informal and important step in thedisciplinary process and that the term only appears in the respondent's disciplinary procedures. In cross-examination TL denied that they had kept the claimant "on therack" for several weeks (15 November to 5 January) and then had done a u-turn. The claimant returned to work on 8 January 2007.

Under the respondent's absence policy (amended in August 2006) an employee who is absent for more than three days must personally notify his supervisor every threedays of his continuing absence. he average absenteeism in the company in 2006 was7%, which was considered high but the claimant's was much higher at 22.7%. TheHR Generalist (HRG) arranged a meeting with the claimant for 10 January 2007. Itwas HRG's evidence that he had three separate issues to discuss

with the claimant: hishigh level of absenteeism over 2006, how he had left the site on 15 November 2006and his failure thereafter to comply with the three-day notification procedure topersonally make contact with TL or another people's manager every three days throughout his absence as per the absence policy. TL sat in on the meeting as the claimant's people's manager. As regards his level of absenteeism the claimant said that all his absences were due to work related stress and injury. As regards the secondissue the claimant denied walking out of meeting of 15 November and saying, "I'm out of here". The claimant's contention was that he said he was feeling unwell and needed to go home. HRG decided to interview the witness, who had attended the meeting on 15 November, on this issue. As regards the claimant's failure to comply with the three-day notification procedure the claimant maintained that he had submitted certificates and did not want to talk to TL. HRG found it a difficult meeting and felt that the claimant had a negative attitude towards both TL and himself. The claimant became quite agitated when TL alleged that he had thrown a document at him at the 15 November meeting but TL backed down almost immediately when the claimant became agitated. The claimant repeatedly asked for documentation regarding fire drills. HRG told the claimant several times that the fire drill issue was a separate issue, that it was closed and that in the circumstances the documentation was now irrelevant.

The HR Director was shocked to receive the claimant's letter of resignation. She had been aware of his health issues. She carried out an investigation into the matters raised in his letter. She did not interview the claimant as part of the investigation process. She did not make any contact with the claimant following receipt of his letter of resignation because she felt that he had made his decision. In her undated reply to the claimant she put forward the respondent's position on the issues raised by the claimant. The claimant had never brought a grievance.

Determination

In a constructive dismissal case the burden of proof rests on the claimant to show that because of the respondent's conduct he was entitled to terminate his contract of employment or that it was reasonable for him to so do.

The claimant, along with one other employee, was failing to reach the increased output targets in summer 2006. Indeed, prior to this the claimant had been failing to reach the standard output of 108 units. It was his uncontroverted evidence that prior to sustaining his injuries his output was as high as that of the other employees. The respondent was aware in summer 2006 that the claimant was complaining of a number of injuries. Yet, despite this, constant pressure was being put on the claimant to increase his output to 120 units per shift. Furthermore, this pressure was maintained despite the fact that the respondent had been notified in late July 2006 by a doctor on behalf of the respondent that the claimant had been certified as suffering with work related stress. It was reasonable for the claimant to believe from his conversations with his superiors and the Performance Improvement Plans issued to him that he would be subjected to disciplinary action if he did not reach the targets; indeed, this

was specifically stated on the Performance Improvement Plans. Whilst the Tribunal accepts the respondent's evidence that a further target of 144 units per shift was not introduced, it was reasonable for the claimant to believe from the meeting of 14 August 2006 that this further increase in output would be required by November 2006. The Tribunal is satisfied that throughout the period from June until his transferout of the foundry the claimant was subjected to an unreasonable level of pressure. Whilst different avenues could have been pursued by an employer in such situation the respondent did not explore these and instead continued to exert pressure on the claimant. The Tribunal acknowledges that ultimately, on medical advice, the claimantwas put on job rotation and in late October he was moved to a different area. (The Tribunal notes that an increase from either 100 or 108 to 120 units does not constitutean increase of 25% as alleged by the claimant.)

The Tribunal next examined the issues surrounding the claimant's failure to leave the building on 9 November 2006 when the fire alarm sounded. The Tribunal acknowledges the respondent's right, and indeed duty to investigate this failure on thepart of the claimant. At the meeting and in subsequent correspondence the claimant maintained that his failure was due to having confused the two alarms. He further contended at the meeting that he had failed to leave the premises during a previous fire drill and no issue had been raised about it on that occasion but that "all hell had broken loose" in November 2009 and he sought the respondent's records on fire drills(as well as other documentation) to support his contention. These records were sought by the claimant during the meeting on 15 November and either by him or his solicitor on a number of subsequent occasions (23 November, 27 December, and 10 January 2007) but had not been furnished to him until after his resignation in January. The evidence of the respondent's representatives who were at the meeting was inconsistent as to whether they had the records with them at the meeting and as to why they were not furnished to the claimant over the two-month period following on from the meeting. There were no reasonable grounds for the delay in furnishing therecords to the claimant. HRL's position on this was unhelpful and caused much aggravation to the claimant. The claimant received some of the records subsequent to his resignation. The Tribunal is satisfied that these confirm the claimant's contention that he had not swiped out of the premises during a fire drill on 20 December 2004. There was no evidence before the Tribunal that any steps whatsoever were taken by way of investigation, counselling or warning to deal with the claimant's 2004 failure. Nor was there any evidence of any steps having been taken by the respondent to investigate any underlying factors that might have contributed to the claimant's failureto respond to the alarm on 9 November 2006. The Tribunal accepts the claimant's version of the meeting of 15 November and that the manner in which it was conductedwas a very stressful situation for him. His doctor's evidence confirmed this. Whilst the Tribunal reiterates the respondent's right and duty to investigate the incident this was not done in a fair, balanced and reasonable manner.

It is not clear to the Tribunal why the respondent accepted, in early January 2007 the claimant's reason for his failure to leave the premises on 9 November when it had not done so in November 2006. Whilst reliance was placed in particular on the claimant's letter of 27 December for reaching its conclusion this letter adds no further information to that made available to the respondent in November 2006. Indeed this

letter in the main sets out in detail the documentation the claimant was seeking from the respondent. The Tribunal accepts that the claimant did not receive a letter dated 7 December 2006 from TL.

Within days of having been informed that a protracted disciplinary issue had just been brought to a conclusion the claimant was again summoned to a further disciplinary investigation interview. Whilst the Tribunal again accepts the respondent's entitlement to deal with the absences of its employees it finds the timing of doing so in this case was unreasonable. This was compounded by the respondent's refusal to allow the claimant the opportunity to discuss the fire alarm issue because it and the meeting of 15 November were inextricably linked to his recent absence. Furthermore his absences earlier in the year were for genuine reasons and had been medically certified.

The investigation carried out by the HR Director was one sided and fell far short of the standards of fairness. No attempt was made to speak to the claimant or mend the relationship. The claimant was sent an undated letter accepting his decision.

The Tribunal is satisfied that the claimant and his solicitor had brought his grievances to the respondent's attention a number of times over the months preceding his resignation.

For the above reasons and based on the totality of the evidence the Tribunal is satisfied that the respondent's behaviour shattered the claimant's trust and confidencein its impartiality. Accordingly, the claim under the Unfair Dismissals Acts 1977 to2001 succeeds. The Tribunal awards the claimant €44,000 under the UnfairDismissals Acts.

This being a case of constructive dismissal a claim under the Minimum Notice and Terms of Employment Acts 1973 to 2001 does not arise.

No evidence was adduced in respect of the claim under the Organisation of Working Time Act, 1997. Accordingly, the claim under the Act is dismissed.

The Tribunal accepts that HRL checked the claimant's medical certificates in respect of work related stress only for the period from 15 November 2006 on. Whilst the Tribunal feels that the entire medical file the respondent has on an employee ought to be examined it is fully satisfied that HRL did not intend to mislead the Tribunal.

Sealed with the Seal of the

Employment Appeals Tribunal

This ____________________________

(Sgd.) ____________________________
(CHAIRMAN)