

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

against

Employer

CASE NO.

UD311/08

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: N O Carroll Kelly BL.

Members: Mr. L. Tobin
Mr. S. O'Donnell

heard this claim at Dublin on 24th June 2008, 11th November 2008 12th November 2008

3 March 2009, 4 March 2009, 17 June 2009 and 18 June 2009

Representation:

Claimant: Mr. Michael Landers, IMPACT, Nerneys Court, Dublin 1

Respondent: Mr. Frank Beatty instructed by O'Rourke Reid, Law Firm, Pepper Canister House, Mount Street Crescent, Dublin 2

The determination of the Tribunal was as follows:-

Preliminary Issue:

Counsel for the respondent claimed that the Tribunal did not have jurisdiction to hear the case. Counsel stated that the claimant had failed to provide the company with details of the claims. The respondent sought further and better particulars from the claimant on two occasions. The enquiries were relevant to the preparation of the respondent's defence of the claims being made against them. It was stated that the T1 A contained very vague information. The claims were of a very serious nature. The company was put in an invidious position because it could not deal with the claims.

Representative for the claimant said there was no statutory provision to give such information. He did not accept the company's bona fides in seeking this information and claimed the company was seeking the information to make the hearing of the case more difficult.

The Tribunal's finding on the preliminary issue was that the Tribunal's statutory framework did not oblige parties to provide such detail and encouraged the parties to reduce the areas of contention before evidence was heard.

Claimant's Case

The claimant told the Tribunal that he commenced work in an Insurance company and was always interested in working as a pilot. He was not eligible initially because he was too short sighted. Changes were made to the regulations, which relaxed the eyesight requirements slightly. He set about initially obtaining a private pilot's license with the intention of instructing people in private small private aircraft. He did three or four introductory flights and he commenced his training in Dublin. He went to South Africa for five weeks and obtained a private pilot's private licence. He returned to Ireland and increased his experience. He also did some training in Fort Lauderdale. He obtained a commercial pilot's licence. Then the next step was instrument-rating and he also undertook training in multi engine planes. Once his training was completed and once he had done his Airline Transportation Pilot Licence exams he had an ATPL licence. He completed thirteen examinations in one sitting and he passed all of them. He obtained his licence five weeks faster than normal and qualified before September 11 2001. He applied to the respondent, City Jet and Aer Lingus. The respondent called him for assessment, interview and induction. He carried out a standard formal simulator assessment, which involved him flying with an experienced pilot, some navigation tracking, returning to land and he answered some questions on aircraft. Those who met the required standard were asked to remain for an interview with DD who worked in the personnel department. DD interviewed him and the interview lasted five to ten minutes. He was not offered employment at that stage. He attended a presentation given by DD and it showed how the respondent operated. DD told him that all staff could reasonably expect to have "commands" in three years. When you commenced as a pilot with the respondent two pilots were on board. One person was in charge, either the captain or the commander of the aircraft. The commander sat in the left seat and was assisted by the first officer and the co-pilot sat in the right seat. You had to achieve a certain level of ability and display a level of maturity. Once you had achieved all the requirements you could then be promoted to captain. It was made clear to him that he could have a command within three years of joining the respondent as long as they kept their heads below the parapet. The pilots were told if they stuck their heads up they would blow them off.

The pilots were shown a spreadsheet of the respondent balance sheets and the cash fund held by the respondent was close to one billion dollars. The respondent's financial situation allowed it to make changes quickly. He was offered employment with the respondent and he needed to be qualified to fly light aircraft. He had to undergo special training, which he incurred at his own expense. He paid £17,000Stg to remortgage his house. Once he completed the training and passed all exams he moved to simulator training, which dealt with how to handle aircraft and emergencies. He then had to do a number of take offs and landings. Once that was completed line training commenced. As a new line pilot he sat in the right seat and the training captain sat in the left side. Central training was in place until he received a standard acceptable to the respondent and he could fly with an ongoing line captain. He started training on 26 September 2002 and at all times he was conscious of a desire to be promoted. In 2004 the terms and conditions for pilots were eroding. One group of pilots were informed that a

efined pension scheme would not be provided for them. Pilots had to undergo a medical check once a year if you were below a certain age and twice a year if you were above a certain age. Pilots now paid for that themselves and it cost hundreds of euros. Pilots were no longer going to be provided with water tea or coffee on board the aircraft. Pilots were warned that the respondent would no longer provide loss of licence insurance. If he developed diabetes he would lose his licence. He felt that he should take advice. The Dublin pilots had a meeting with the Irish Pilots association and he attended. The chief executive summoned them to a meeting and he told the pilots that he was very unhappy with what was developing. A vote was taken around 2004 on the conflict between Dublin pilots and the respondent.

New aircraft was introduced in the respondent and he could not give an exact date, B737 800 replaced the older aircraft B737 200, this was possibly done in 2002. The new aeroplanes were larger and were more fuel-efficient. He received a copy of a memo dated 20 April 2005 addressed to all Dublin based pilots. Staff were given two options in relation to the conversion training to the B737 800 series. Option A was that the respondent would pay the cost of the training programme which was €15,000 but you agreed to repay this sum in full to the respondent should you leave the respondent for any reason within a period of five years from the date of commencement of training or that the respondent would be compelled to engage in collective bargaining with IALPA or BALPA or any other trade union within five years of commencement of conversion training. Option B outlined that the payment of training costs should be paid by the pilot in full and in advance of the commencement of training. He sought clarification on this as they were informed if anyone brought in a union that they would have to pay €15,000

He retained a contemporaneous note of a meeting he attended on 28 June 2005. He was asked to sign an agreement for conversion training and he had no guarantee of remaining in the Dublin base. The claimant was very disappointed and was asked to sign a bond. This was for five years with a clause that if somebody started talking to a union he was going to have to pay him €15,000. He and his colleagues were under pressure not to have involvement in the pilots union. A meeting was held in a hotel in Dublin on 25 and 26 April 2005. On the first day captains attended and on the second day first officers attended. There was a very poor attendance and as far as he could recall there were only two people in attendance as well as the chief executive and the chief pilot RC. At the meeting attendees were told to stay away from unions. The respondent offered to pay for training; the claimant asked why there was a five-year bond. He spoke to the chief executive and told him he found things difficult financially and that the chief executive wanted him to sign a contract which allowed him to decide at a place and time that he should come up with €15,000 to pay him. The chief executive asked him how long he was with the respondent and the claimant was told that he would have his command probably within a year. The chief executive told him that there was about a €30,000 pay rise. The claimant told him that this did not get away from the fact that he wanted to put himself in a situation where he may have to come up with €15,000.

Prior to that a meeting was held in November 2004 in the respondent head offices. There was a very good attendance and it was his first time attending a meeting with the chief executive. DOB, director of flight operations gave a presentation and the chief pilot was present. The chief executive arrived late and he sat in silence. The chief pilot encouraged questions from the floor and the chief executive launched into an angry diatribe against pilots. He told them if they wanted an f... war that they should put on their hard hats and he would give them a war. The claimant was absolutely shocked, his hands trembled and he sat on his hands so that his

colleagues would not notice. The chief executive shouted at one of the claimant's colleagues. The chief executive did not want his staff involved in a union. The chief executive told them he was sick of hearing them working in Siberian Saltmines and to go and get a job elsewhere.

It was his understanding from the 10 August 2005 memo that if he paid money he could pursue claims against the company. He was going to go with option B rather than Option A. He earned €32,000/€36,000 per annum and not €120,000 as indicated in the memo dated 10 August 2005. The claimant was of the understanding that once he completed part B that he was free to pursue claims against the respondent. If he did not sign either option A or option B he understood that he would continue to fly the older Boeing 737-200 aircraft until such time as the last of these aircrafts were retired from the fleet. He returned option B to the respondent and delivered it to DOB in his office in August 2005. At that stage it was his understanding that he would be free to pursue claims that he may have had against the respondent. He received a memo dated 18 August 2005 regarding command upgrade. This was an internal document, which described how the promotion system worked. He believed in 2005 that he met these requirements. He received a further memo issued by the chief pilot on 18 August 2005. The first stage was achieving the hours and the second was the flight assessment. The third stage in the process was called command upgrade.

On 8 March 2006 he wrote to Cpt B who was his base captain in which he outlined that he would be pleased to be considered for inclusion in the next round of the command upgrade assessment. The claimant was found to be suitable for command and he had a very good line check, (CRM) crew resource management and aircraft handling and that he was ready for command. In a letter of reference dated 15 May 2005 his salary was grossed up. He received a memo from PB, general manager flight operations on 17 May 2006. This letter outlined that he was eligible for command and that he would be contacted by the training department to confirm dates for his courses. He was not contacted or given a course date. He received a memo from PB on 20 July 2006 regarding flight operations update. His reaction when he read it was that there were huge numbers. He was not told that another eighty-two had been doing the course. The claimant wondered why he did not hear anything. He felt it reasonable that he should be considered for the course. On 20 July he was concerned, he was going on annual leave and he gave the respondent a contact address, as he wanted to ensure the respondent had some way of contacting him. He felt he did not have an entitlement to a command but he thought it reasonable that he should be considered. He was alarmed by a letter dated 25 July 2006, which he received from DOB director of flight and ground operations. There was a good chance he would not be selected and he was getting worried. A copy of a bond was not enclosed in a letter of 11 October 2006 addressed to him by PB the general manager of flight operations. It was the first time that it was put to the claimant to drop claims against the respondent, he was shocked and he had paid for his own conversion training to allow him to maintain his claims against the respondent. He sent an e mail to PB on 29 November 2006 asking him if he would be considered for command upgrade with a Dublin base or if he at some point must drop his claims before being promoted to the position of captain in the respondent. He was concerned and he did not feel that the respondent was treating him fairly at this time.

On 4 December 2006 he sent a letter to PB where he stated that he would like to apply for the position of captain in Dublin. He delivered the letter to reception and e-mailed it to PB to tell him that he was sending the letter. On 12 December 2006 PB sent him a letter and asked him to

state that he had no claims against the company as of 12 December 2006 and that he was prepared if considered for a command position to sign a bond. The bond was enclosed. He spoke to his union about the situation. He had a very young family and he wanted to know if his career was going to progress and if this was the case he wanted his career to move on or he would make alternative plans.

On 15 September 2006 he flew with Cpt TO, the head of line training on a command upgrade assessment flight and he received very positive feedback. Cpt. TO told him that he had passed and would advise Cpt JB. It was a major setback when he received the letter of 22 December 2006. which stated "I refer to your letter of December 14th. As you have not responded to my letter of December 12 within the specified deadline you will not be considered for command training at this time." The claimant regarded his letter of 14 December as a response to PB's letter of 12 December. The claimant believed that it answered all of the questions PB had asked in his letter of 12 December. When he received a letter from PB on 22 December he received phone calls from some of his colleagues. They had a discussion as to whether or not they should drop their claims or just get on with it. He told his colleagues he would not be dropping his claims but it was up to them as to what they wanted to do. He was aware that some of his colleagues subsequently operated as captains with the respondent.

He sent a letter to PB on 28 January 2007 and he tried to get an answer to the question of as to whether his claims were an impediment to his career progression. It was absolutely clear that he did not get a direct answer. He received an e-mail from PB requesting him to contact him on Tuesday or Wednesday. He felt the best way to communicate PB was in writing. On 12 February 2007 he undertook a further line check and command upgrade assessment. He passed and was recommended for command upgrade. He notified PB of this in a memo dated 14 February. He also reminded PB that he had not replied to his e-mail of 7 February. 2007 PB issued a memo to all pilots on 19 February 2007 "In 2006 the respondent ran command training for 112 first officers and some 96 are now captains. Provision had been made for command courses for a total of 220 first officers from April to November 2007. He felt at this point that his career prospects with the respondent had ground to a halt. On 7 April 2007 he did a further licence proficiency check, which pilots did every six months in a simulator. The result of this was a very good check and the claimant was ready for command now. He brought this to the attention of PB on 12 April 2007 in an e-mail. The respondent advertised externally to fill command positions and the claimant put his hand up to say "I am here". He received an e-mail on 4 May 2007 from PB advising him that he should contact his base captain in Dublin directly regarding his command upgrade. The claimant hoped that they had made a breakthrough and this was moving forward. On 5 May 2007 he e-mailed his base captain Cpt. JB but he had his incorrect e-mail and Cpt JB did not receive it until the 23 May 2007. In this e-mail he outlined that he would appreciate if he could let him know when the next available command upgrade course commenced. He did not receive a response and in the meantime he did another line check and command upgrade assessment with on 5 May 2007. He received a good pass and was recommended for command upgrade.

The claimant was rostered for ground duties on 23 May 2007, which meant he was not flying and he assisted in updating the various approach charts that the respondent used for navigation and approaches on landings of the aircrafts. He met Cpt. J.B on 23 May 2007 and he gave him his instruction. He asked Cpt. JB about the e-mail of 5 May 2007 and he told

the claimant that he had not received it. Cpt JB gave him his correct e-mail address and he asked his wife to e-mail Cpt. JB. Once Cpt. JB received the e-mail he told the claimant he wanted to talk about the matter. Cpt. JB wondered if he got the impression from PB's response if the upgrade process was to commence for him. He told Cpt. JB that he had been in regular correspondence with PB but PB had ignored most of his e-mails. Cpt. JB told him to contact PB and that the company policy was not to allow anyone with claims against the respondent be promoted to captain. Cpt JB said that was not his decision but that this is the instruction he had. He asked who had decided this and was it the chief executive and Cpt. JB said it would have been the chief executive, DOB and EW.

He asked was this reason he was not being promoted and Cpt. JB responded that he presumed so. He enquired if there was anything else preventing him or if there were other problems he needed to address. Cpt. JB asked about the memo that he referred to in his e-mails saying that the claims were now worthless. Cpt. JB said that the only first officers who had been promoted had dropped their claims against the respondent. He confirmed that he had received it a number of times and he said that he did have claims. Cpt. JB suggested that that he think about what it was worth and that the claimant should consider dropping his claims. The claimant refused and said that he had taken the claims on points of principle. The claimant felt that the way the Dublin pilots had been treated was wrong. He felt that he had certain constitutional and legal rights and he did not think it correct that he should have to give them up to allow his career to progress. He told him that he did not see any relationship between his taking action against the respondent over one matter and his being promoted, which was a separate matter. The claimant further stated that it seemed wrong to him that if an employee takes legal action against their employer because they feel they have been unfairly treated that they should then be further treated unfairly by way of punishment. Cpt. JB agreed with this and Cpt. JB seemed a little edgy at this point. Cpt. JB told him he would call HR to ensure he was explaining it correctly. Cpt. JB returned and told the claimant he spoke to DH. Cpt. JB told him that HR told him there was no direct relationship between claims and stopping promotions. He explained to Cpt. JB that this left him with no option but to look for a job elsewhere and that this was difficult because while there were jobs out there very few were in Ireland and he had four young children, two of whom had settled in school here. Cpt. JB asked him if he had tried A L as they had a good package on offer. He told Cpt. JB that he would consider it although the overall package was significantly better than the respondent's, the actual cash in hand at the end of the month was slightly less. The claimant did not think that he could afford to take the drop. As AL had a seniority list he would start at the bottom with his four to five years with the respondent counting for nothing. He would probably wait another five years at least go get a command. This is why he wanted to proceed in the respondent. Cpt. JB suggested that he write to DH in personnel. The other first officers had dropped their claims but to his knowledge no one had ever just asked for the promotion while saying that they would not drop claims.

Cpt. JB told the claimant that he had passed his e-mail to HR and also that he had phoned PB. PB's attitude was that there was not a company in the world that will promote someone who is suing them. He received a memo later that day from Cpt. JB. Cpt. JB outlined to him in his letter that the claimant had not yet responded to PB's letter of 12 December 2006 and that his application for a command position would not be considered until he did so. The claimant was very disappointed, he believed that when he received the letter from PB that there was a breakthrough. He sent another e-mail to PB on 25 May 2007 in which he outlined that the claimant had not yet replied to a letter. The claimant felt that PB believed the matter was going to

move on and that Cpt. JB was made aware of that. In a letter to PB on 28 May 2007 the claimant stated that he was very disappointed to find himself back at this juncture once again.

His initial application to be considered for command was submitted to the respondent on 8 March 2006 more than one year and three months previously. It was now clear that the reason he would not be promoted to captain in the respondent was because he had claims against the respondent. He received a letter from PB on 27 June 2007 in which he outlined to the claimant that he was prepared to sign the bond, which was sent to the claimant on 12 December 2006, another copy was enclosed for his information, and he had claims against the respondent. He was informed that the next stage of the process was a command upgrade assessment flight with his base captain JB, which would be rostered in the next two weeks. If he was successful at that stage an assessment interview involving the base captain and a representative from the personnel department would be scheduled. He had completed a number of line checks, which were command upgrade recommendations. He had completed a number of simulator checks, which were the licence proficiency checks, and he had done one official command upgrade assessment flight. This flight was with Cpt. TO who was head of line training with the respondent. His comments regarding a delay in the upgrade process were entirely due to the vagueness of his statement that the claimant would sign a bond depending on the terms and his failure to state in unambiguous terms that he was willing to sign a training agreement if offered a command course. It stated that you have now provided the necessary confirmation and the process could move on. In the letter it stated that the claimant also claimed that Dublin pilots were offered promotion to captain with the respondent and guarantees of a Dublin base if they dropped their claims and that the claimant was misinformed there was a selection process with an interview, technical assessment and a training agreement to be signed which was exactly the same process that applied to the claimant. The claimant appeared to be under the misapprehension that being offered a command course and position, as a captain in the respondent was an automatic entitlement. A position as a captain was a promotional position, it was one of high responsibility and the respondent had to ensure it selected the appropriate person for the job. It was not about flying ability, there were plenty of first officers who were good pilots regarding technical ability but did not have the appropriate management skills, attitude or maturity to run a safe operation on the flight deck as a captain.

He spoke to the chief pilot in the respondent before the 26 June. 2007. At this point the respondent had an ever-decreasing number of permanent Dublin based pilots. Their pay system operated differently where he had a basic salary and some flight sector pay. The pilots with contracts did not have a basic salary; they were paid per hour that they flew. It was a regular occurrence that he would go on a long flight to the Canaries and back which meant that these flights were four hours and fifteen minutes each way and the pilots on contract would do six flights over and back to the UK or four flights to France and back. The best thing for everybody was that they would swap those duties because it was financially to his benefit. Two takeoffs and landings was an easier day for pilots. It was very difficult to organise swaps at this stage because the respondent had removed telephone numbers from lists and the pilots had access to their own roster. The pilots could no longer find out what everybody's flights were in the base and arrange swaps between themselves. The pilots on contract managed to find out who was going to the Canaries and would put a note in his pigeonhole if you wanted to do a swap you could contact them to organise that. He met Cpt. RC on 26 June 2007. RC asked him was he alright and if he was doing his command upgrade he replied no and RC asked him why not. The claimant told him because he could not have legal rights and a command and work for

the respondent. Cpt. RC replied that is right and he asked the claimant if he was going to drop his claims. He told RC that he was not going to drop his claims. RC said to him "are you mad". He told RC that he would have to leave and he had no alternative. RC told him that he was f... mad that this is the best job in aviation and that it was the best paid, best roster and best aeroplanes. He said it was a shame because he was probably going to have to move his family abroad and RC told him don't drop his claims but he could not say that. He felt that maybe what RC said was a little bit risky. This was the chief pilot telling a first officer to drop his claims so this process can move forward. RC told him that he travelled to all the bases and he met guys who loved the job. The claimant told him he felt very strongly about his claims and he would not drop his claims.

The claimant told RC this was not right. He told RC that even if he dropped his claims he would have to go to England and RC told him that it was a command in Dublin. The claimant told him that if he dropped his claims and had to go to England or wherever at chief executive's choosing and pay his own expenses while earning no sector pay that he could not do that. The claimant was not going to use his SSIA to subsidise a man of his wealth and a company of the respondent's wealth. The claimant had difficulty affording a babysitter so how could he afford a hotel room for a month of training. RC told him that it was a short-term pain for long-term gain. The claimant told him that it was unfortunate for him as in some ways he was caught in the middle of someone else's fight and RC replied that is why the claimant should drop his claims and look after himself. The last time he said that he ended up in the High Court. The claimant did not know what he meant by that. By this stage he had applied to a number of companies for employment. On 27 June 2007 BA offered him a job. He asked for a couple of days to think about it. He was given forty-eight hours to get back to the respondent. He was in receipt of a letter from PB which outlined to him he was going to be rostered for a command upgrade assessment with Cpt. JB and if that worked out he would go into the process. It appeared he had the option on one hand and the offer on the other. Point six in the letter stated, "you confirm that you have no claims against the company as of x date". His promotion to Cpt would depend on him signing the particular bond and undergoing the command assessment flight and being successful in a subsequent interview. He had to drop his claims against the respondent in order to progress to command. He had been told that it was company policy that no one would be promoted if they had claims against the company. At this stage he was not convinced that even if he had done that he would have been allowed to successfully go through the process and get a command.

It was always his intention that if he paid €15,000 on the assumption that he could pursue his claims that his career would be allowed to progress within the respondent. In option B he was free to pursue his claims against the respondent. He decided to accept the offer in BA. He wrote to Cpt. JB on 29 June 2007 and submitted his resignation. He sent an e-mail regarding the command upgrade assessment on 10 July 2007. He received a response from PB on 12 July 2007, which stated that the claimant had made the decision to resign and not to accept a place on the command upgrade assessment process. PB rejected the accusations and claims that the claimant raised in his e-mail of July 10 2007. A command upgrade assessment was a specific flight and that was done with Cpt. TO. The flight was just one step in the process in order to gain a command. If successful he would at some point be scheduled for an assessment interview. He worked out his notice and he accepted the BA job on the basis of that. There was another process ongoing with the EA in Dubai and they offered him a position. He accepted a position in Dubai and he started in October 2007 and has been there since with his wife and four

children aged, ten, eight, six and three. His parents reside in Dublin. It is a very different lifestyle, he had a very good relationship with his parents and they used to go to his parents for Sunday lunch. His brother and sister reside in the UK. He felt in some ways to the detriment of the future of his children to move to the Middle East but he could provide them with a better education and his children have a better standard of life in the Middle East. His second daughter is very homesick.

Before he came to the Tribunal he did a flight to Johannesburg where he defended the respondent. He thought that he had hit the jackpot when he received a job with the respondent, which he held in great respect. He had no intention of leaving. The respondent was expanding and was excellent to work for; he was based in Dublin and walked his children to school. He was in receipt of a basic salary of €42,000 net of tax. He was paid per flight and was rated per sector. A sector was rated as a flight and if you flew two sectors it meant two flights, it was a return flight to London Gatwick and he received €57 for each journey, which amounted to €114. If he completed six flights he received €190.00. Once a month he collected a sector cheque from the respondent's head office. At one point the respondent ceased to pay rates for these flights and the claimant could not recall the date. He believed this was early 2005. There was an expansion in the Dublin base and new routes included places like Latvia, Lithuania, Poland and Canary Islands. All of the new routes were in excess of one hour forty-five minutes and Dublin pilots were not paid double sector pay for those. As he understood it someone was able to produce a document to the respondent showing minutes of a meeting where it had been agreed that they would pay double sector rates. The respondent agreed to reinstate the double sector payment on the existing routes but stated that there was no agreement to pay any new routes. Over the years the sector cheques decreased. He believed that all Dublin based permanent pilots were targeted. He received €30,000 net if he worked for ten months of the year He flew slightly more hours in 2007 than in 2005 and the average length of the flight was longer. For a three-hour flight he earned the same as a one-hour flight. At the time the Dublin pilots were in conflict with the respondent. The average length of the flight had increased from fifty-seven minutes to two hours and thirty minutes. If he flew one hundred hours per month he earned €2,600. The relationship between the Dublin pilots and the respondent was very poor at this time. There was a fall off in June 2007 and money was tighter. There were no transfers out of base for the Dublin pilots and there were no promotions for first officers. He did not believe that captains were allowed to go for promotion and this was another strand in the campaign.

The claimant was a permanent pilot and he had a fixed basic salary. There were pilots on fixed term contracts who were paid when they flew. They had a different set of conditions. By the time he left there was a high percentage of contract captains employed in Dublin. The expansion was created by contract pilots rather than permanent staff. He believed that this was a deliberate strategy on the part of the respondent because the Dublin pilots were involved in trying to stem the flow of the decrease of their terms and conditions and had gone to the Labour Court. The respondent wanted pilots to negotiate directly with it. The impression he got was that more and more things were disappearing. The same strategy was not followed with pilots in Hahn or Charleroi because he did not think that any of those pilots had claims against the company. He believed that Dublin pilots were the only ones that suffered.

He enjoys his work and his employer is aware of this case. He is confident that he will reach his command in Emirates, which has a massive expansion plan and he assumed it if it continued in four to five years he should be entering the process or have it completed if all went well. At

the moment his earnings are €4,600 net per month. He received an increment of four per cent after the first year. His current salary including the four percent increment after the end of five years is €70,000. If he had remained with the respondent and was promoted he would earn a gross salary of €120,000. That would have gone on over the next five years. He had always a desire to be a training captain. He had lots of experience in the respondent. He felt that he could have been a good choice of training captain possibly in future years. He would earn more money as a training captain but he did not have the scale for that.

He wanted the same educational aspirations for his children as he had. His children have a UK curriculum in the school that they attend. The company he now works for pays ninety to ninety five percent of the education for three children and the fourth child he pays for himself. If his children were in Ireland they could avail of free education. He is not sure if there is anywhere for his children to attend third level education in Dubai. If his children had not attended secondary school in Ireland for the three years preceding third level education they would not qualify for European rates and he would have to pay the full cost of third level education in Ireland as it stands at the moment. His present company paid a small contribution towards the cost of moving a certain percentage of his belongings.

In cross-examination he accepted he signed a contract of employment and that there was nothing in the contract in relation to a promotion. The claimant accepted that the conditions of employment booklet applied to his employment. The claimant accepted that there was a grievance procedure in his contract and accepted that it applied to the respondent. He joined the respondent company as he thought it to be a progressive company. It was unique in Ireland. He knew that the respondent was not unionised when he joined. He did not recall that the respondent respected its employee's rights to be a member of a union and he did not give the matter any thought. The respondent was not unionised and it did not deal with unions. He never had any difficulties with the chief executive and he did not consider the chief executive approachable. He accepted that he approached the chief executive at a meeting.

His representative completed his claim form on his behalf and he agreed with the text of his claim form. He assumed that it was his representative that came up with the formula of words that stated there was a systematic and ongoing campaign of harassment. He was denied promotion such that he had no reasonable option but to resign. It was pointless to complain, and he never made a complaint to the respondent itself. He subsequently entered a claim under the Payment of Wages Act. He felt that there was no point in instigating the grievance procedure. The terms and conditions were eroded for senior captains. The claimant was at his wits end. Some of the difficulties had gone back to a time before he started in the respondent. There were rumours that there was some argument with baggage handlers some years ago and that the pilots had backed them, the chief executive had held a grudge against pilots since. First officers in Dublin were the most affected. Put to him how many claims he had against the respondent he replied he imagined it was four. He along with sixty others brought a claim against the respondent in relation to union status. He had other sets of proceedings against DOB and the chief executive. He could not recall when the claims were issued but he believed it was the start of 2004. He did not know if an employer was entitled to know the number of cases he had against it. He then stated that the respondent was entitled to know what proceedings he was taking against it. Some pilots had defined benefit scheme, changes were made but not to his defined pension scheme. The defined benefit scheme was not going to continue for seven pilots. On certain charter flights food was provided and the charter flights were in the

minority. He accepted that the respondent had to have pilots do the conversion course. The respondent had to ensure it had enough captains. The claimant agreed that there were more captains, first officers and cabin crew.

The fact that the cost of the training was written off by the respondent over Option A offended him. Put to him if he thought that the respondent was compelled to pay for conversion courses he replied is there a legal requirement. The bond indicated if an employee left the respondent within two to three years you had to pay back the payment. He agreed that it was probably true that he considered himself entitled to be affiliated with the union. Option B gave him a choice and one last offer and having no job. He took notes of a meeting on 28 June 2005 to assist his memory. The meeting started to get nasty and he wondered if there was a resolution of different pilots and management. As far as he could recall he was advised to take notes. He had not heard of the phrase contemporaneous notes at that point. He had claims against the company and it was a wise idea to take a record of what was happening. He could not recall when he recorded the notes of the meeting. He could not recall exactly what was said at the meeting. He was worried and unhappy over the meeting.

He did not have a conversation that the case had anything to do with upgrade command. If he exercised option B he would be free to pursue claims. Option B was pay first for training and be free to pursue claims against the respondent. He was entitled to pursue his claims. Option A & B were only relevant to conversion. He was asked to confirm that he had no claims. He accepted that the respondent was very litigious. It was not possible to train everyone together. The union advised what it considered the adequate option. The claimant agreed that he knew what he was signing. He could not recall if he signed a victimisation claim. A number of claims were put forward on his behalf. One of five claims he referred to earlier was the High Court. He took advice from people who know about these matters. Put to him that other people instigated claims on his behalf he replied that they advised him what his options were. He did not know how many claims he had against the respondent. In his opinion the number of claims were not part of the case yet. Put to him that he instigated claims against the respondent he replied that they were claims ranging from victimisation to use the legislation under the Labour Court to try and defend himself.

The claimant undertook a command upgrade assisted flight on 15 September 2006. He flew on one occasion with Cpt. TO and not two occasions. He undertook a flight on 23 March 2006. He reiterated that the only day he flew with Cpt TO was on 15 September 2006. Asked that this was not an assessment flight he replied that he had it noted in his logbook as a command upgrade assessment. The claimant asked Cpt TO how the flight went and he told him that it went very well. There was a series of checks and balances in place. He was suitable to go to the next stage as required by the respondent. An upgrade assessment flight was different to a line check with a command upgrade recommendation. He rejected that there was never an upgrade assessment flight.

He was not given a command date. He did not instigate the grievance procedure at that point as he was still hoping that he would be able to move forward. His friends had left and gone to different airlines. He heard PB was a very reasonable man and he thought that they might move the matter on. He felt that the matter was not strong enough to instigate the grievance procedure. He was in direct correspondence with senior members in the respondent. He was going to have to deal with his immediate supervisor and captain. He believed he if went

through grievance procedure it was not going to work to his advantage as the final stage of that procedure was for his grievance to reach the chief executive who was the person that dictated the policy. It would have been a complete waste of the claimant's time. He did not want to be any more adversarial than he wanted to be and he hoped that the matter would be resolved. On the one hand he invoked the grievance procedure as an ongoing issue and he tried to move it on. He opened a channel of communication with PB. The proceedings that he initiated had nothing to do with command upgrades. A number of promotional places were available. He was optimistic that he may be able to move on. He never previously invoked the grievance procedure. He was going away on annual leave and he wanted to ensure that all his bases were covered and if anyone needed to get hold of him they could do so. There was a cabin crew girl who instigated a grievance procedure but he did not remember the details of it. By the time he had left his job he had a large amount of correspondence with very senior managers. He had conversations with senior management where they had told him that it was company policy and it was not going to change. A grievance procedure at that point was irrelevant. His impression was that if his complaint ended up on the desk of the chief executive he would not be successful. Put to him if that was his impression and that he may have been wrong he replied that he had no idea what the chief executive was capable of doing. He had afforded the respondent many opportunities to address his issues. He did not decide to deprive the respondent to put the matter right by way of a grievance procedure and if anybody was being deprived it was him. He had written to the respondent and given the respondent a number of opportunities to put the matter right.

He wrote a letter to DOB on 25 July 2006. It was unclear as to how he had given the impression that he assumed promotion to be automatic. The claimant wanted to find out if there were any reasons in relation to his suitability for selection. The claimant did not believe that if he was selected for the process that it was thereafter automatic. He had to be selected to enter the promotion procedure. It was his understanding that the letter from DOB on 15 August 2006 was the end of the matter. On the 5 September he updated his hours on the Crewdock system and submitted that. That was what gave rise to the letter of 11 October 2006. He believed that his response was on 13 October 2006 by way of e-mail. He confirmed that he had claims against the respondent on September 26 2006. He was asked to sign a bond but he could not agree to sign the bond because he had not seen it yet. He agreed that he would consider signing a bond depending on the terms of the bond. He sent the e-mail of 13 October 2006 to PB stating it that he had not received the bond and he believed he had the correct address for PB. On the 29 November 2006 he sent a letter to PB. In letter of 12 December the claimant stated that if he was prepared to be considered for a command position that he would sign a bond but not "the bond". He could not sign the bond that was enclosed, as it was only a sample. He believed he had responded to all his correspondence and he had asked questions to which he was not given an answer.

At the resumed hearing on 3 March 2009 the claimant accepted that when he joined the respondent that he knew it was a non-unionised company and did not recognise unions. He accepted that there was no obligation on the respondent to negotiate with the union. He accepted that the respondent has discretion to promote and that the respondent was obliged to make an evaluation before it gave a promotion. He accepted that the respondent invested a significant amount of money in its aircraft. It was necessary for the respondent to carry out a conversion course to go from the 737-200 to 737-800. He paid for his training with the respondent and he could not remember how much he spent. For a first officer to be considered for command process the prerequisite hours was 2800 total time and 500 of those hours must be on a 737 800. He had to achieve certain standards within the simulator. There was an annual assessment, which was a legal requirement. He needed to have

a full ATPL licence before he could act as a commander. He would not necessarily have that as a first officer. The requirement for that was to have the required hours and do a small exercise in SIM. Once you did an exercise in the SIM which was to fly using a landing system called an Instrument Landing System and on completion of this at a satisfactory level you could go to the Irish Aviation Authority and have your licence unfrozen and you would have a full airline transportation pilots licence. He was also required to have line checks. That was an annual assessment and the way the respondent organised this was you reported for work and flew with a pilot that was due his line check then you would do the like check at the same time so you could do more than one line check in the year. He believed that two checks in the simulator per annum and one line check were standard. If you failed the line check you had to return for retraining in the simulator. He did not know if there was an assessment carried out by the base captain. A total of eighty-two first officers were progressing to the training in July 2006. He did not know if there was a plan by PB to start the command training until April of 2007.

PB issued a memo to all pilots on 17 May 2006 regarding command upgrades process and that they would be contacted if they were eligible for the course. He believed at this time that there were notices on the respondent website looking for direct entry captains and first officers. He believed that he achieved the prerequisite of 500 hours by April 2006. The claimant disagreed that he was a relatively inexperienced pilot in relation to the 737-800s. Outside of Dublin he agreed that there were many pilots who had considerably more flying experience on the particular aircraft but there were people in Dublin who had more flying experience in total. He was one of the first to attend a conversion course. He agreed that five hundred hours was the minimum requirement and there were many candidates who had more than the required 500 hours on 737 800s outside of Dublin. The respondent pilots flew into challenging conditions and had to deal with medical emergencies and this was far more important than pilots with more aviation experience.

The claimant on his claim form indicated that he was harassed by the denial of a promotion. He agreed that there were selection prerequisites and that it was reasonable for the respondent to use those criteria as a part of it. He believed that the basic criteria were as specifically laid down by the IVA. There was a minimum requirement, which could be put forward for upgrade. If a pilot did a line check that was excellent it was a better result than fair. The respondent could use criteria over and above the basic legal minimum requirement and he believed that it probably did. He did not think this was reasonable of the respondent if both candidates were otherwise equal.

The chief executive attended the meeting and the claimant decided to speak to the chief executive with colourful direct language. The claimant was invited to the meeting to discuss conversion training. The claimant was presented with a choice to pay €15,000 for training or give up his constitutional rights. He sold his car for €15,000 and bought a replacement for €6,300. The big picture was whether he had rights and whether the chief executive decided who was or does not have rights. In the context of his claims he stated that if he felt threatened he had a legal entitlement to defend himself. He was frank and open to him and told him what the pilots concerns were and that they had constitutional rights. The claimant in his TIA form had stated that there was a systematic and ongoing campaign of harassment, which included denial of promotion, manipulation of rosters to reduce pay and deliberate underpayment. The claimant had no reasonable option but to resign.

The claimant received a letter dated 29th May 2007 from PB, on 30th May 2007. PB in his letter

outlined that he had no record of receiving letters from the claimant dated 13 October or 29 November 2006. He told the claimant he had failed to respond to his letter of 12 December 2006 within the specified deadline. He asked the claimant to confirm that he had no claims against the respondent as of 29 May 2007 and that if he was prepared to be considered for a command position to sign a bond. Until such time as he received an unambiguous response to the issues he would not be able to deal with the matter further. He responded in a letter dated 18th June 2007. In this letter the claimant stated that he was prepared to sign the bond, which his seven Dublin based colleagues had signed and who had recently been awarded command upgrade courses in return for having dropped their claims. He did not think that the bond enclosed was the bond that the seven pilots signed.

The claimant informed the respondent that he had the requirement for the evaluation process. The requirement to operate as a captain pilot in command was 500 hours. He reiterated that he would sign the bond signed by his seven Dublin based colleagues but he did have claims against the respondent. The claimant received a telephone call from one of his seven Dublin based colleagues who asked him if he was going to drop his claims or come in with them and the claimant replied no.

He assumed that the matter would be dealt with by his union and that they would then meet DOB.

Having done that they would be issued with a bond, which did not have the clause relating to claims against the respondent.

He received a letter from PB on 27 June 2006. This was a response to the claimant's letter of 18 June 2007. The claimant disagreed that he was now being allowed into the command process. He was asked if he was prepared to sign the bond, which PB sent to the claimant on 12 September 2006. The claimant stated that in this letter PB tried to say the entire delay on this was that he wrote to PB on 13 October 2006 using the words "depending on the terms ", and due to the fact he was ambiguous in the e mail of 13 October the process had been delayed. PB previously wrote to him and told him that he never received his e-mail. He did not know if it was the case that the bond he was furnished with on the 12 December was identical to that of his seven based Dublin pilots. He never saw the contract that they signed. He spent sixteen months trying to get clarification on the matter. He had assumed that the bond the other seven signed did not have any reference to having to drop their claims.

The bond that he was asked to sign on 27 June 2006 was the same bond. He was told by two people in management to drop his claims. He had concerns regarding what was going on, he did not know what the master plan was. He was undergoing a final assessment with BA. The claimant had already undertaken a flight with Cpt. T.O and he suddenly had to do another one and he did not see a requirement for that anywhere. It was clear to him that there was no confusion in his mind. In a letter to PB he outlined that he had completed a command upgrade assessment flight and he did not query that. He also e mailed Cpt. JB and told him that him that he completed a command upgrade assessment flight with Cpt. TO. Cpt. JB read that and did not query it. The major difficulty the claimant had was whether or not he had to drop his claims. It was not the claimant's belief that in a letter dated 18 June 2007 he was offered into the command process. He did not believe that on 27 June 2007 that he had a number of options open to him. He could either remain with the respondent as a first officer maintaining his claims against the respondent and hope that he was not on a black list to be singled out for any sort of detrimental treatment in the future as a result of having tried to stand up to the respondent. He did not believe that he was going to get a command. His big concern was whether he could give up his rights in return for pursuing his career. He felt up to this point he was treated badly. He believed that he had answered question

two, he was asked to sign a bond and he said he was prepared to agree a training bond. The letter dated 14 December 2006 was his response to letter dated 12 November 2006. He had submitted his hours on crew dock. He did not have difficulties with the respondent for the first two years of his employment between 2002 and 2004. He felt in 2004 that pilots' terms and conditions were eroding. He accepted that many of the terms and conditions including the defined pension scheme did not affect him at all. There were a number of pilots who were on the receiving end of a certain treatment. At the start he had no idea where it was going to go and it ended up with a small group of first officers.

He was not provided with water/coffee on flights. He had to do his medical on his day off and pay for it. He had to arrange his ID pass on his day off. Dublin was a frozen base and no first officer was promoted to captain. He did not believe that he was specifically militant. His union had gone to the Labour Court and the respondent had no effective means of negotiation. He took advice from his union IALPA. In a letter dated 14 December 2006 he was asked for clarification on what exactly his requirements were in relation to his claims. He reiterated that he did not think that he was quite militant towards the respondent. He disagreed that he was part of a group that were driven by his union who was attempting to use the conversion course to compel the respondent to negotiate with them. He did not feel that there was anyone in the respondent that he could address his claims with. He did not think about the victimisation complaints he had against the respondent in great detail.

He refuted that it was the respondent's position that his union to fight this cause specifically used the claimant. He went to a meeting to discuss conversion training and he would not forgo his legal rights. Union recognition could not be imposed on a company. His case was whether or not he had to drop his claims to proceed within the respondent. It was a matter of whether or not he was allowed to have constitutional rights. He stated that if he was a female pilot who was in this situation but had a sexual harassment claim pending against the respondent and he was informed that the respondent could not go ahead with this and that he had to drop the sexual harassment claim that would be wrong. He could not say how many claims he had against the respondent. He could not say what each claim was and the crux of this was whether or not he had an entitlement to take a claim, not whether or not the claims he took were valid. One claim was on foot of a memo from DOB that the union wanted to bring a case to the Labour Court. There was no elevated court to deal with the respondent. At a meeting the chief executive shouted at them and called them a crowd of f..... idiots. He believed he would have another claim for bullying or harassment on foot of a meeting where the chief executive asked one of the pilots what was he smirking at. The claimant believed that this was an inappropriate way to deal with people. He was never asked the detail of his claims. He was not one hundred percent specific what his claims were but he was specific that he had claims and he was entitled to defend himself.

He did not know what happened to the claims that he had in the Labour Court. He did not believe that he had taken a victimisation claim against the respondent. He did not know when the claims issued. He was reluctant to get into details if all claims were brought in the same year. A letter was written to the chief executive by his union. He presumed the respondent had to be advised of that.

He had intended to take a claim under the Payment of Wages Act but he did not have an appeal before the tribunal in this matter. Put to him that he left the respondent to pursue his claims against the respondent he replied it was about whether he had to sign a piece of paper (that he had no claims against the respondent). He put the matter in the hands of advisors. He was told not to raise his head above the parapet. At the time he knew what the claim was but could not remember

specific details. He went to his union and asked could he have a constructive dismissal case. He took option B as he was free to pursue claims he had. He paid the money for training, as he wanted to pursue his legal rights. He took a contemporaneous note of a meeting with JB on 25 June 2005 and he typed then when he got home. He believed that the contemporaneous notes were accurate.

JB told him to write to the respondent and inform it that he wanted to be promoted but he would not withdraw his claims. JB appeared to him to become a bit uneasy and he told him that he was going to Personnel to ensure that he explained this correctly. PB returned and told him that there was no direct relationship between the two. JB telephoned PB who responded that there that was not a company in the f... world that would promote someone who is suing them. As the claimant walked out the door he met Cpt. C. Cpt. C asked him if he was doing the command upgrade and the claimant told him he was not because he could not have legal rights and a command to work for the respondent. Cpt. C asked him if he was going to drop his claims. The claimant replied no and Ct. C asked him if he was mad. The claimant told him he had no alternative but to leave.

He felt that he was in with a very good chance of receiving an offer from BA. He was told that nobody with claims would be promoted to captain. He accepted that the grievance procedure applied to his contract during his employment. He did not have a complaint regarding a manipulation of his roster and that there was no deliberate underpayment. He felt as of 20 July that there was something wrong and that he was being targeted. He accepted that there was a grievance procedure in the contract and he did not know if he was obliged to instigate this. He spoke to his supervisor and with his supervisor's manager who was a chief pilot. The next stage of the grievance procedure would be to go to the chief executive. He did not consider going to the chief executive, as he was not a man for turning. He met the chief executive as little as four occasions during his time with the respondent and on one occasion he put his point to him previously very openly and frankly. The chief executive told him that he would have his command within a year or two. He did not approach the chief executive regarding his grievance procedure and he stated that he would not approach him. The claimant reported for work forty-five minutes before a flight and had a briefing for fifteen minutes and then boarded the plane. The chief executive would not be there at 1a.m.

The claimant submitted his resignation on 29 June 2007 and he felt that there was no more that he could say. He decided not to go to personnel as he had been dealing with PB who was a very senior figure in the respondent. He declined an invitation to telephone PB as PB accused him of creating confrontation. The claimant did not want to get into a situation where something may be misconstrued. He decided not to discuss the matter further with him over the telephone. He had been trying to discuss the matter since April the previous year and he could not get a direct answer. He did not know what PB wanted to talk about and PB was based in Stanstead. He outlined his entire history on 8 March 2006 to PB and he disagreed that he declined to talk to him further. Mr.D H told him that there was a policy, which said that if you had any claims against the company that the director of personnel dictated the policy. On 28 January 2007 he asked if his claims were an impediment to my promotion. Put to him if he asked a colleague DD what bond he signed he replied that DD asked him if he was going to sign them and he replied no. The entire matter hinged on whether or not he had claims and if he was going to maintain them. As far as he was aware his earnings at the time of leaving the respondent were €42,000.00 per annum gross and his net earnings a month were €3,000. His basic salary in the EA is €4,600 per month, which is €55,200 gross per annum. He was in receipt of sector pay of €7,000 per month so his annual salary

per annum was €62,400. He then said he was in receipt of €8,400 per month, which would increase his earnings to €63,600. When he worked with the respondent he received sector pay of €1,314 net per month. He has rented his house in Dublin and he had to refurbish the house. His net pay in the EA is approximately €10,000 more a year than it was in Dublin. When he lived in Ireland he had €790 a month in child support allowance. He did not have to pay for any primary school fees. In his current job accommodation is provided and he has an allowance towards the cost of the education. His mortgage in Dublin was approximately €1700 a month. He has ninety to ninety five percent of his school fees paid for three of his children's private education and he pays €6000 per annum for the fourth child.

In his current job he has medical insurance for his wife and three of his children and he pays €80 a month for the fourth child. When he lived in Ireland he paid €120 a month for health insurance. He had the capacity had he become a captain in Dublin to receive an increase of €30,000 per annum. The respondent needed captains and if the respondent was recruiting first officers it needed people who could train. A large percentage had 500 hours experience and then went forward in training. He agreed that there was a twenty five per cent failure rate in relation to the command promotion.

The sector pay for the Dublin pilots decreased. He did three sector flights on the last three days he worked with the respondent. This meant he did twenty five per cent of his maximum legal months allowance of flying in three days. His claim was on his T1A form that his pay was manipulated. This related implicitly to him. It was his belief as a Dublin based pilot that he was specifically targeted. Prior to the claimant joining the respondent a pay system was agreed including the fact that he would be paid double sector pay on any flight that lasted more than one hour and forty-five minutes. The respondent at some point ceased to honor that agreement. It continued to pay the double sector pay on five routes that existed over an hour and forty-five minutes, but then by the time that he had left there were some thirty additional routes in place. The pay system was that the respondent paid them double sector pay on any sector over an hour and forty-five minutes. - The respondent continued to honour it on five pre existing routes. He had never seen a pilots agreement in 2000 in writing. December 2005 was the first time he operated it and thirty additional routes were in place by the time he left. He agreed that there was a pay agreement in 2007. He had seen a letter that the respondent would repay 10,000 of the 15,000-euro that the Dublin based pilots had paid for their conversion costs after four years on condition that they dropped any claims

they had against the respondent. There may have been a change to an hourly rate but he did not know the details.

The claimant stated that he did sixteen per cent more flying than the average pilot and he earned one per cent less than the average. As a base his preference was to remain in Dublin. An eight and a half hour round trip to Tenerife and back earned him 57 euro but the pilot in Stanstead on the same job earned €230. He felt he should get a fair days pay for a fair days work. It was unfair that he should pay the respondent €15,000 and the pilot in Girona did not have to pay this. He could not say for definite if he was treated any differently than other Dublin based pilots.

When the claimant handed in his notice he had a job with BA. He applied for a job with AL a month after completing the BA assessment. He received the BA offer before getting the outcome of the simulator assessments with Aer Lingus. He was offered a place on a conversion course with BA and he subsequently received an offer from EA in Dubai. There was a very strict seniority list in BA. It was not an aspiration of his to fly long haul jets. He felt in the long term the job in the EA was better for him.

In answer to questions from the Tribunal he stated that everything was not resolved on 18 June 2007. The bond that was coming along still had the clause “confirm you have no claims against the company”. He informed the respondent that he would sign the bond, which was signed by his Dublin based colleagues. He was not prepared and had never had intended to drop his claims against the respondent. He was prepared to sign a bond that the respondent had which he believed did not include any clause about claims. He agreed that the respondent had the right to set down its own criteria for promotion to a very senior level and that would include loyalty to the respondent. There was a minimum legal requirement that criteria have to be reasonable. He referred to the earlier analogy when he said is it fair to say to a female you can have your promotion but you have to drop the sexual harassment claims because the respondent did not like that. He did not believe that to deny someone promotion unless they gave an undertaking to forego their constitutional right that was a reasonable criteria.

He could have remained on as a first officer and maintain his claims. He did not think that there was any question regarding his loyalty to the respondent. He stood up for what he believed in. He believed that the seven other pilots dropped their claims. He did not know if the grievance procedure the respondent had in place was worth the paper it was written on. He felt there was no point in pursuing the grievance procedure.

The process in relation to the command upgrade assessment was that as a pilot operating in the industry he had to go into a simulator and undertake a flight-test which comprised of manoeuvres and he had to meet all the criteria within a specified legal limit. Every six months he had to do a flights test. For the purpose of the command upgrade process you have to score above a certain rating, or you have to achieve a minimum rating or level on that check when he did. Then the next day he had to do a line orientated flight-training exercise where he had to train on various things that might have relevance. He could find himself doing an exercise which involved ditching the plane into the Hudson River. This side of it would be completed twice yearly. When he was flying he did a line check with a senior captain who sat in the jump seat and observed the flight. They might fly to London Gatwick and then reverse roles and fly back. The check pilot’s role in that situation was to establish that these two people were professional and operated the aircraft correctly and were operating everything within the respondent’s standard operating procedures.

This was done annually and one of the requirements was that as part of the annual line check the person doing the check made a command upgrade recommendation if he felt you had the right criteria or potential. Then you had to meet the hour requirements that were laid down. It was a specific respondent thing that you would then complete a specific command upgrade assessment flight with a designated individual.

There were levels of instructors and examiners and they had to be senior. He found himself rostered for the first time with Cpt. TO. The claimant wondered why he was rostered to fly with him and it was a pleasure from start to finish. Cpt. TO was one of the gentlemen he had met during his life. He said to Cpt TO that he thought that the command was not going to happen and Cpt. TO replied that nobody had specifically told him that and that they would treat the day as a command upgrade assessment flight. He asked Cpt TO if he had anything by way of debriefing and if he the claimant could get an indication of how he had performed. Cpt. TO mentioned there were a number of things, which triggered checks and checklists in an aircraft. They had to confirm that they had to switch on all the aircraft lights, they had to switch on the seat belt sign which would have been an indication for the cabin crew to start securing the cabin and then use the recall button which illuminated if there is any system malfunction. There were three things that he had to do going through flying at 10,000 feet and he completed them. Cpt. TO's only comment to him was that he did them silently and he wanted the pilots to say out loud lights, belts and recall. The respondent could check pilots whenever they wanted to. One of the line checks that he did the other guy pitched up and told him that he was being line checked and you would not necessarily get a warning and nor should you need it. The person doing the line check has to sit in the jump seat and a form had to be signed. Cpt. TO was not in the jump seat that day because he was conducting a line check.

In re examination he stated that he completed a flight with Cpt. TO on 15 September 2006. He believed that he had told Cpt. J B the he had completed a command upgrade assessment flight with Cpt. TO on a particular date. He had e mailed Cpt. JB who never responded to his e-mail. He asked Cpt. B about the e-mail and he told the claimant that he had never received it. He had an incorrect e-mail address for Cpt. JB. Cpt. JB did not question the fact that he told him that he had done the assessment flight with Cpt. TO.

Respondent's Case

TO told the Tribunal he was chief line instructor and he was in charge of training on the aircraft, which was called line training. When students finished their school in simulator course they came to the aircraft to be trained. He joined the respondent in 1999. He stated that it was entirely incidental that on 15 September 2006 he was on a flight with the claimant. He spoke to the claimant after the flight. It was a good flight and they discussed the command upgrade process. As part of his job he would speak to first officers on a regular basis about the command process specially those who had the criteria for entry into the command process. The claimant was a nice person and he did well on the day. They went through the command upgrade hours module where a green light element comes from because it has to go through the process. It is a coloured coded system the respondent used for tracking on a first officer to progress towards command assessment. He must go green in the system in order to move on and that was the base captain's responsibility.

This was two and a half years ago and it was not a command upgrade assessment and he had no note that it was. The claimant asked how his flight went and he told the claimant that it went well. He did suggest that he would speak to JB the claimant's base captain and tell him that he had flown

with the claimant and the flight had gone well.

If it were a command upgrade assessment it would have to be rostered as such. There was nothing on the roster to indicate that it was a CU assessment. If it were a command upgrade assessment he would have approached the flight differently. He would have got the claimant more involved in the pre flight planning to see how he was thinking and he would have asked him what fuel would he like in a certain sector. There were certain approaches that they would complete during the day as part of the command upgrade assessment flight. There were two types of approach, a precision and non-precision. Other things would have been done as part of the CUA if they were not done because it was not one. He discussed the command upgrade process with the claimant after it and he told the claimant he would mention to his base captain that they had flown together and that it went well. He believed that he did not tell the claimant that he would put his name in green in relation to this. He believed that he told Cpt. JB how well the flight went. He never told the claimant he was going to make him green. Assessment forms were available electronically for command upgrade and he did not complete a form for the claimant. He saw in the claimant's record that he had a form filled out for a simulator check he did with PB. The form was not there so he would have expected a call from the claimant to ask him why he did not submit the form if he truly believed it was the command upgrade assessment flight.

In cross-examination TO stated that the claimant performed well on the day. The claimant was a very nice person and easy to get on with. Based on the flight he would say that the claimant had the ability required. It was up to the base captain to decide whether an interview was appropriate or not on his knowledge of the first officer in his base. The line checks flights could form the basis on the command upgrade assessment. After the flight with the claimant he told him that he had done well and that he would talk to his base captain JB. He met JB regularly and he mentioned the claimant to him. He believed that the claimant had the criteria for command process and he should be assessed for command process. He may have met the claimant three or four times and he was not in a position to say to put him through the process. He explained what the upgrade was and it was colour coded. He did not say that he would tell JB to turn the claimant's name green. It was up to the base captain to recommend and there were other things involved in a command upgrade recommendation than a flight the claimant did with him that were not within in his remit. Approximately eighty to eighty three were successful in the command upgrade process in 2006 out of a possible one hundred candidates. The reason for this large number was the respondent needed captains. Not every first officer becomes a captain and a high percentage of first officers will not be captains. All Airlines would like to think all the pilots they recruit would become captains. JB did not make any comment to the witness regarding the claimant's qualities.

In answer to questions from the Tribunal he stated in order to undertake the command upgrade process it was normal for him to document this if he met him at base. He could not recall if he asked the claimant if he had the criteria for the command upgrade and he believed that the claimant's experience would have indicated that. He did not know why the claimant had not entered the command upgrade process and it was not something that he checked up. The claimant sought to be considered for the command upgrade and in all probability he would be considered. The claimant spent time in the simulator. He would ensure that the base captain checked this. He was not based in Dublin and he spent a lot of time out of Dublin. The fact that the claimant had claims against the company was not within his area.

The second witness for the respondent PB told the Tribunal that he was general manager of flight

operations and was based in Stanstead. He was employed with the respondent since May 2006. He was responsible for the day-to-day dealings between the respondent and the pilots of a non-technical nature and the deployment of planning crews. He liaised with HR and the Training Department. He was not trained as a pilot and he was involved in resolving issues. He had a degree in business studies and masters in economics and had been involved in business since he was thirteen. He was appointed full time to the respondent in May 2006 and prior to that was part time as a consultant. He knew on joining the respondent that the respondent did not recognise unions. It was not company policy that employees were punished for being a member of a union. There was a huge effort made to try and train people from the Boeing 737 200 to the new Boeing 737-800 and the respondent had purchased a large number. The Boeing 737 200 was very different to the 737 800. The 200 was a thirty to forty-year-old aircraft and had old clocks. The 800 aircraft was a much larger aircraft. The captain was in command of the aircraft and a co pilot had a good degree of responsibility but was not in charge. There was a very strict criteria laid down in international regulations and the respondent had its own criteria as to who could be promoted and who could be a captain. The respondent would have to plan a very rapid training programme for people to convert to the newer aircraft. In 2005 before this started that had been delayed and there was a backlog in the command promotions. There were very few command upgrades in 2005. In 2006 there was no policy for command upgrade process. There was a shortage of captains in 2006 and other airlines were hired to operate flights on the respondent's behalf in January, February and March 2006.

2,800 hours of flying experience were necessary for the command upgrade, 1,300 on a JAR 25 type aircraft. The respondent required people to have 1300 flying hours on a heavy jet. The base captain was responsible for selecting people in their base. It was evident when he joined there was a number of people who may have had the hours but may not have had the maturity or management expertise to fly the respondent's operation. Turnarounds were done within twenty-five minutes. The base captain would know how a first officer would be able to manage his time. As part of the flying evaluation a series of line checks were carried out. A line check was when a senior training captain flew with the crew and checked them. That was completed at least annually but sometimes more than annually. The LPC a licence proficiency check was done twice a year. LPC was when the pilot goes to the simulator and does recurrent training. To be considered for command you would have to get a good evaluation in two previous simulator checks. The line checks would have to be good as well. The people doing the training would have to complete the relevant forms pertaining to that. The training captain flew with the crew. Simulator training was done with trained pilots. A pilot had to obtain a good simulator check to be considered for a command. The pilots who completed the training would complete the relevant forms. In May 2006 some thirty aircraft were coming on stream for the next three to four years. Not many upgrades took place in 2005. The pilot had to have 300 hours before the base captain would consider you and you needed 500 hours before you could be appointed. Conversion of 200 to 800 took place in 2005 and the respondent had a shortage for a number of months for flight decks to operate comfortably the schedule that it was operating. The respondent had a limitation in resources. Two of the respondent's own simulators were available and they were used for recurrent training. The respondent had a small number of line training captains in the company so logistically to get training completed was very complex. In 2005 there was a backlog of experienced co pilots (first officers) in the company. In May 2006 the respondent had a large percentage of pilots who did not receive training in 2004 and 2005. The biggest problem was in Stanstead. Some had up to 3500 to 4000 hours on jet aircraft and some had 200 to 2500 on 737 800. The respondent needed captains urgently in Stanstead. The respondent had a base that had grown quickly in Frankfurt Hahn and had opened a base in East Midlands and it was also short

staffed in Charleroi. The respondent did not have simulator capacity in the East Midlands. He located empty simulator slots in Germany with a company called RWL and he organised training slots in the months of June, July and August 2006 for between 90 and 100 command upgrade courses which was the course to go from first officer to captain. This was organised in mid May 2006. It put a dedicated staff and training crew in Germany. He drew up a list of people that were suitable for command upgrade. He was being inundated with enquiries from base captains, colleagues, senior managers, pilot's girlfriends and in some cases pilot's mothers as to when command upgrades were going to be completed. Ten courses were organised and the courses would contain eight to twelve people. Some contained the people with high experience and were concentrated mainly in three to four bases. A number of names were deferred for consideration at a later time.

The claimant would have 500 hours in May 2006. That would have been less than the other people and he did not need people in Dublin right away. People were asked to contact their base captain directly if they had queries regarding their eligibility. The respondent had dedicated staff members from the training department in Germany and all training was conducted there. A memo regarding command upgrade was sent to staff. He tried to improve communications with the workforce generally. Pilots downloaded their rosters on the company website every week and notices were put on the website. This was known as crew dock (the company internal website for employees). At this time a number of the claimant's colleagues queried when the Dublin co-pilots were going to get commands in Dublin. He replied that hopefully it would be the beginning of 2007 or into 2007 but that other people had more experience. The claimant when he joined the respondent had to pay for a training course to learn to fly the 737 800. The respondent had completed a number of courses in 2005 but base training had to be completed before you started to fly. This was very expensive to do. The respondent had to take one of the aircraft out of normal service. The brand new pilots who had never flown a 737 800 sat in the seat with a highly experienced captain and they had to complete touch and goes which meant that the plane came down, touched the runway and went back up. It was a gruelling day for the trainer and for the aircraft. He persuaded the chief executive to give him a spare aircraft for the base in East Midlands. He managed to train five TREs Tye Rating Examiners and that was the most senior grade as a training pilot. An SFI was a more junior instructor, a co-pilot or first officer who was an instructor and had limited duties.

His personal policy was to try and resolve matters over the telephone. The previous year there was a huge problem regarding annual leave. He prioritised the leave and he was anxious to help the pilots in Dublin. The respondent had recruited external captains and external first officers for training courses and that was working well. A large number of new recruits had been referred internally. The new command upgrade had progressed very well in RWL in Germany. A total of eighty-two first officers progressed through the training and a high percentage had long experience. The respondent asked them to if they wished to be considered for the command upgrade to make sure that they updated their flight hours as on Crewdock the respondent had a system where they kept account of that. Eligibility in hours was a minimum requirement. He had possibly half the number of course places available for the number of people who met the minimum requirements at the time. The plan was to end the command upgrade programme in August 2006 for the year. If pilots were not successful the first time in the command upgrade they got a second chance. The respondent planned to do command upgrades in June, July, and August 2006. The expansion had been generally concentrated across Europe and in the UK in the previous couple of years

In the summer of 2006 there were over three hour queues in Dublin airport and facilities were overstretched. The respondent could not expand in Dublin at the time. Discussions took place with the airport authority, the respondent and AL with a construction company from Cork who

came up with a plan to provide a temporary facility in the airport. The construction company stated that within 12 weeks it could build a temporary terminal at the airport, which became known as "the sheds". The respondent needed twenty extra captains in Dublin in the summer of 2007. A number of first officers in Dublin had approached him and were seeking to be promoted to captains. He asked could he run a course specifically in the Dublin base and he was given a budget for additional captains in Dublin. In late September early October the respondent made an announcement about the extra aircraft going in.

Just because you had the minimum required hours did not mean that you were assigned a course date. The respondent did not ignore the claimant's request and the situation was that there were other people further up on the qualification list. When you were promoted from a first officer to a captain you had to leave the base that you were in because the respondent did not have positions available in the current base and he had to operate from somewhere else. In a letter DOB indicated to the claimant that he had no automatic entitlement or right. On 16/17 May 2006 the claimant would have had the 500 hours minimum requirement on the 737-800. The claimant had qualified for the process in May of 2006.

The respondent ran courses in June July and August and he did not know why the claimant was worried about it. DOB, Director of Flight and Ground Operations wrote to the claimant on 25 July 2006 in response to his letter of 20 July 2006 enquiring about the command upgrade process. The claimant was going on holidays and he gave an address where he could be contacted if a place became available on a command upgrade course. DOB responded by letter of 25 July 2006 and informed him that promotion was not an automatic entitlement or right. The claimant would get his chance when his time came. The claimant met the minimum criteria, he had no problem with absences, he was polite and a co-operative person. He sent a letter to the claimant on 11 October 2006 in relation to his application for a place on a command-training course for the Boeing 737 800. The claimant was asked to confirm that he had no claims against the company as of 26 September 2006 and that if he was prepared if considered for a command position to sign a bond. The bond was not enclosed due to an administrative error. This letter was sent to a number of the claimant's colleagues.

PB had not received correspondence from the claimant dated 13 October 2006 until 31 December 2006. Around that time a close colleague had died and he was working on New Year's Eve and the last thing on his mind was dealing with e-mails. The claimant sent e-mail to NJ who was involved in IALPA on 29 November 2006. He sent the letter dated 11 October 2006 to the claimant and to a number of the claimant's colleagues inviting them to get involved in the command upgrade. While this was good news for first officers in Dublin he had one hundred people in other locations that would have had more hours than some of the first officers in Dublin. He was inundated with complaints from other pilots in other bases who queried why the guys in Dublin with less experience were getting these offers. He did not have enough to cover the crew of the four extra aircraft that were going into Dublin due to the fact they were building the temporary pier and other applicants were invited if they wanted to transfer from other bases into Dublin. He wrote to the claimant again on the 24th November 2006.

PB sent a memo to all pilots on 27 November 2006 regarding the position of captain in Dublin. The purpose of this was there were significant disparities between the Dublin and other European bases and they wanted to bring things into line a bit more. He was not sure if he immediately read the e-mail of 13 October 2006 from the claimant. The claimant confirmed that he had claims

against the respondent. The claimant confirmed that he would sign a bond depending on the terms. A bond was enclosed with a letter sent to the claimant on 12 December 2006. On 14 December 2006 the witness received a letter from the claimant. He was quite surprised and disappointed with this letter. PB was trying to help the claimant and he was trying his best to create training courses. PB was not aware of a union issue at this stage. PB sent a letter to the claimant on 22 December 2006 whereby he outlined to him that, as he had not respond to his letter of 12 December within the specified deadline that he would not be considered for command training at this time. PB expressed his disappointment with the claimant. He had not ruled the claimant out of command upgrade and matters had to move on. He received a memo from the claimant on 26 January 2007. The claimant outlined to him that he needed all the relevant facts before he was prepared to drop his claims. The claimant stated that he was not intent on creating unnecessary confrontation. He asked the claimant to telephone him. The normal way to resolve issues was by telephone. He asked the claimant to give him a call on Tuesday/Wednesday. He felt that it was better rather than getting into correspondence with the claimant. The claimant declined his invitation to phone him. The claimant had twenty-four seven access to him

He felt that asking the claimant to call him was a reasonable request. He sent an e-mail to the claimant on 1 February 2007 and asked him to call him Tuesday or Wednesday. The claimant responded that he had thought long and hard about this and decided to decline his invitation to call him. He sent a memo to the claimant on 12 February 2007 in which he outlined to him the steps for the command training process. PB felt that he could have resolved the issue. He sent a memo to all pilots on 19 February 2007 in relation to command upgrade for 2007. He started getting grief about first officers getting preferential treatment. He got harangued in a supermarket by a pilot's girlfriend. He decided to issue the memo to clarify how they were going to do the command upgrade for 2007. One hundred and twelve completed the command upgrade in 2006 and ninety-six were successful. The respondent put together a plan from April to November 2007 The training was going to be undertaken in Amsterdam where the respondent had rented simulator time in a facility there. PB completed the first forty interviews. He clarified that pilots would have to sign a bond. He did not say on 23 May 2007 that there was not an f... company in the world that would promote someone who is suing them. At no time did the claimant mention a policy or that he had been told of a policy. PB felt that the claimant had not answered both questions regarding the bond. The claimant answered one of the questions when he said he had claims. He stated that he was prepared to sign a bond, which his seven colleagues had signed. He did not think that the claimant had any difficulty in dropping his claims. At the end of August 2006 the plan was to restart the courses again in April 2007.

From April to September 2007 the respondent undertook courses. He thought that the courses continued into October 2007 because the respondent had a slightly lower success rate in that period. Some of the people had slightly less experience in 2007 and found it more difficult. He was hoping to get the claimant sorted with a course probably in April 2007. He had confirmed to the claimant by letter 12 February that there was no policy in relation to claims. He was of the understanding that the claimant still wanted to be a captain with the respondent. The claimant was informed by letter dated 27 June that he would be on a command upgrade assessment flight with his base captain JB in the next two weeks. The claimant at this stage had not done an assessment flight; he could not have done it because he was not rostered to do these until the paperwork was sorted out. He accepted that the claimant had claims and that he would sign the bond. The claimant as far as he was aware received two copies of the bond. After the 27 June the claimant did not revert to the respondent to say he had a different bond. He had earmarked the claimant for a slot in Dublin.

The claimant did not query if the bond dated 12 December 2006 was different and everyone got the same bond. All of his seven colleagues were promoted in Dublin. He did not hear anything else from the claimant and the claimant resigned his position. The claimant wrote to him on 10 July 2007 in which he outlined that his letter came as too little too late. The claimant received it the same day as he received a telephone call from another airline offering him a job. The claimant stated that he would never be promoted to captain with the respondent while he had any kind of claim against the company. He wrote to the claimant on 12 July 2007 in which he outlined to him that he resigned from the respondent on June 29 2007 and he was offered a place on the command upgrade assessment on June 27 2007.

Sector pay was difficult to understand if you were not a pilot. In 2003 when the claimant started he did his conversion on a Boeing 737-200, which could not fly very far. The respondent was very limited in the number of routes it could operate and did not operate many long routes at that stage. Pilots were paid per sector and every sector was a flight. If you flew from Dublin to Liverpool and returned you got paid for each way and as far as he could recall it was €22. There were five routes, which were longer, and they paid additional sector pay on those routes. On all other routes they got paid the same rate regardless of how long the flights were. The pilots did a new agreement with the company in 2000. The pilots negotiated no changes with the company at that time regarding the way sector pay was paid. After that time those five routes still attracted double sector pay. At the end of 2005 the respondent introduced larger planes with the Boeing 737 800 in Dublin, which could fly up to five hours non-stop. The pilots in Dublin who represented themselves did not have a new agreement regarding their sector pay. They remained on the old system and the flights became longer. The pilots now get paid a standard rate per hour that they fly. If they fly for four hours they get paid for 4 hours 10 minutes multiplied by a standard rate per hour. If they fly 8 hours they get paid 8 hours multiplied by a standard rate per hour but at that time they got paid per single sector. On a 6-sector day you got paid a fixed rate per sector and on the last two sectors you got paid a bit more as well. You could fly a two sector day on a 737 800 and end up with less money than someone who had flown 6 sectors but a shorter day. It now is different and they formed an ERC and have negotiated new deals. There was no question of the claimant's roster being manipulated. Dublin pilots were not discriminated against in that regard. There were five routes where pilots got double sector pay but that only applied to those five routes and even that was not agreed in the 2000 agreement the respondent continued to pay double sector pay for these routes after 2000 but that everything else was paid on a per sector basis. The claimant got paid a fixed amount per sector for sectors 1 to 4 and he got paid an additional amount for sectors 5 and 6 in a day. If the claimant's journey was more than 1 hour 45 minutes and it was not one of those destinations, it did not come within the additional sector pay. The roster process was automated and was based on your available hours that you had flown that month, when annual leave was due and the hours you had flown the previous year. The computer allocated the duties and it was not random. The claimant received six percent more flight pay than the average first officer in Dublin received. The figures for 2007 indicated that the Dublin first officer average was €11,748 and the claimant's was €1,579, which was one per cent behind the average for that corresponding period. In September 2007 pilots negotiated a new deal for themselves on that sector pay and they got paid per hour.

In relation as to why the claimant did not accept the position with BA he stated that he would bite his right arm to go to BA. It was like the nirvana for pilots. You have to be a foot soldier for four or five years but it has got to be the most prestigious airline in the world for a pilot to fly. He was aware of only a small percentage of pilots in the respondent leaving. The respondent has only had

three or four people from the respondent go to BA in the last three years and every one of them would be a good guy. He believed that there are great opportunities there. EA was an outstanding airline, with wonderful career opportunities. It was a very well run operation and technically extremely competent with an excellent training department. They fly brand new super aircraft and were the leaders of the technology at the moment. They have some wonderful facilities. The claimant was in the holding pool for AL as well so he had a huge amount of choices. When he left the respondent there was no guarantee that he was going to be a captain. There was no policy regarding the claims. The claimant claimed that he would have been on an extra €15,000 per year for training as a line-training captain but the number of vacancies for those positions are annual appointments and are not guaranteed in any way. The training for that was particularly difficult and a high percentage of people were not successful in this.

In cross-examination he stated that a current captain's base rate in Dublin as €70,000 and from January 2007 it would be €66,000. Asked how he could equate that to a gross total of approx €11,000 when you take the sector and gross up the sector pay he replied the sector pay was paid net of tax. There were captains that earned €130,000 per annum who would get promoted to line training captain which was a supplement. If you were a captain in Stansted in 2007 you could earn €130,000. In June 2008 a captain earned closer to €110,000 in the Euro zone.

He did not know if the respondent paid five percent of the pension and it depended on the pension scheme. He did not have a role in the recruitment of pilots. He was involved in assigning pilots to bases once they entered the respondent. He was not familiar with the pay in Aer Lingus. The respondent did not compete with BA. Pilots in BA over the course of 10, 15, 20 years could earn considerable amounts of money when they were promoted to senior levels. The respondent was preferable for family life because you were home every night. A lot of young pilots would find it cool to go to work with BA. He did not think that BA had a significant short haul at the time the respondent website was established. One or two from BA had joined the respondent. BA had been recruiting very few pilots over the past number of years. BA generally hired UK and Irish pilots. They very rarely hired anybody from any other nationality. The pool of pilots they recruited from was relatively limited. He had no idea if it was difficult to get into BA. He was aware that BA was seen as a cool sexy place to work and was very attractive to young pilots.

He had no argument with the claimant about his work, his line check was good the claimant was a fine colleague and people were happy to work with him. Historically there were 5 routes where double sector pay was paid. Many years ago the respondent operated some charter flights for tour operators to a small number of destinations when they had excess capacity at the weekends. There were 5 nominated routes. On the 737 200 it could not operate much further than Malaga. Those 5 routes had been paid at a higher rate of sector pay and that was it. In the 2000 agreement the pilots agreed and signed an agreement, which set out the sector pay very clearly from 2000 until 2007 when they renegotiated their agreement. They were paid per sector rate and it did not matter how long the sectors were, they were just paid a per sector rate.

He did not know if the sector pay increased in 1999, as he was not with the respondent. There was an agreement in place regarding these routes and he did not know what routes attracted double sector pay. Double sector pay in 2000 continued to be paid for those five routes only. He was not too sure if it was only for the five routes out of Dublin. The 2000 agreement did not mention anything about the duration of routes. A number of companies supplied the respondent with a pool of pilots that it used to operate their flights. These were independent contractors and had to comply

with the simulator checks the same as all other pilots in the way they operated. They were subject to the same line checks carried out by the respondent.

Dublin pilots got paid €28.50 per scheduled block hour. The respondent expanded in 2006/2007 in Dublin. There was a need for extra pilots and he did not plan to run command upgrade training until April 2007. When the expansion in Dublin was announced he the Dublin pilots asked him when they would get the opportunity to do the command upgrade training. A number of people applied to transfer from bases in Europe and the UK into Dublin.

A number of first officers in Dublin had minimum requirements and a number went on to become captains. The respondent tried to find a way to deal with sector payment. Over the years the claimant would have earned 6 percent more overall than an average Dublin first officer. In 2007 he earned €11,000 for 9 months. In that period he earned 1 per cent below the first officer average for Dublin. It was less than the year before but not less than the average. The roster was not manipulated.

He agreed that the Dublin pilots did lose out in sector pay. The overall way that the Dublin pilots system of sector pay was paid in that period was not ideal in relation to their average earnings. In 2006 the claimant earned 12 percent more than the average. In 2006 the claimant worked 15 percent more hours than the average Dublin first officer. He agreed that from late 2006 through 2007 that the relationship between the claimant and the respondent became somewhat fraught. It had a very small team of people who worked extremely hard to keep the roster in place and they did not engage in individual rostering of pilots

In 2007 the respondent was operating longer flights in the summer period. Some weeks after the claimant left the Dublin pilots agreed a new payment system where they got paid their scheduled block hour. The respondent did not single out any individual or any group of people in rostering. In September 2007 the average earnings in the Dublin base were reduced as the respondent used 800's and the flights were much longer. The whole operation changed and the Dublin pilots agreed to change the system after the claimant left. Dublin pilots came up with a new ERC and negotiated a new deal. It never happened that the respondent rostered the Dublin first officer pilot group on more lucrative or less lucrative routes than the contractors. A roster could be rewritten and a pilot given individual duties. He agreed it was possible to go into the computer system for whatever reason to manipulate the roster.

In the summer of 2006 he was aware of the controversy between the Dublin pilots and the respondent. There were a number of cases ongoing but it was not something that got discussed at great length because the respondent was too busy dealing with other matters. Four new aircraft had come in and had commenced flying to new destinations and the Dublin pilots came up with their new ERC and negotiated a new pay system after the claimant left.

He believed if that was an issue it was good to talk. The ERC system was there so that the pilots could negotiate with the respondent. He believed in 2007 that the pilots in Dublin negotiated a very good deal with the respondent. He believed that the ERC system worked very well and he believed that it was the best mechanism for the pilots to negotiate. It did not matter how long the flights were, they got paid for the time they flew. The Dublin pilots negotiated an annual allowance, a pension scheme, and significant increases for trainers. The claimant was not admitted

to the command upgrade process until June of 2007 because the question about the bond had been unanswered. From correspondence he received from the claimant he was led to believe that the claimant was going to sign the bond. He agreed that if someone had claims against the company they could sign the bond. He then stated that the claimant in his correspondence had said he was prepared to sign the bond. He was of the belief that the claimant would not have claims at the time he would have signed the bond. If he was not dropping his claims he could not truthfully sign the bond because he the claimant would not be telling the truth. Any pilot who signed the bond confirmed that they had no claims against the respondent. The claimant had been admitted to the command upgrade process and to complete it he would have had to respond yes. He then said it was not necessary for a pilot to drop any claims he may have had against the respondent. In order to be admitted to the command upgrade process you must drop your claims. There was no policy regarding that. The witness wrote the bond and as far as he could recall he included Clause 6. He included Clause 6 as the respondent tried to get clarification on the status of claims. It was his understanding that the claimant was going to sign the bond and he assumed that he was going to drop his claims.

The claimant left before the agreement applied. The claimant was not admitted to the command upgrade because he had not answered the question about the bond. It was a single bond and the same bond was demanded of every pilot. The claimant decided that he had claims. From the correspondence from the claimant PB was led to believe that the claimant was going to sign the bond. If someone had claims against the company they could sign the bond. If the pilot had claims against the company he could sign the bond. If the claimant was not pursuing his claims he could not sign the bond. The claimant was admitted to the command upgrade process. He assumed that the claimant was going to drop his claims. Clause six requested pilots to drop claims in conjunction with HR report. The respondent did not know what claims the claimant had and the claimant did not know. He accepted that the claimant had claims against the respondent.

He sent a letter to the claimant on 27 June 2007 and he thought that the claimant was prepared to sign a bond. The claimant from the evidence adduced on 3 March thought it was a different bond agreement. PB agreed that the policy was to sign a bond. Pilots could not be promoted if they had claims against the respondent. A policy was put in place as the respondent wanted to know where it stood in relation to an employee before promotion. The respondent needed to know any and all claims against the respondent. He did not want to have legal claims against the respondent. A bond was in place before 2006 and prior to the command upgrade assessment he had to confirm that he had no claims against the respondent. The respondent had pilots with more hours than the claimant. The respondent had more experienced people in the system and he expected that the application would be kept on file. The claimant was on very minimum hours at the time. It was not always the case that Cpt, J B acknowledged a letter. He was not sure if a fixed base captain commented on suitability. The base captain checked the number of hours. The pilots that undertook the course had approximately three thousand to four thousand hours and experience on 737 800. It was widely known in the respondent that the respondent had far more people eligible than they could train and on 20 July 2006 all the spaces for the year were filled. He could not say what bond these pilots signed. Some were asked to sign a bond and others were not.

Put to him if he ever sent a memo to pilots that they were going to have to drop their claims he replied that this occurred only when they entered the process. He did not say anything to the base captain about the claimant. The current command process was that pilots had to have minimum hours. He received the e-mail, which was released on 31 December dated 30 October. He went through his spam e-mail about once a week. If existing captains wanted to transfer to Dublin they

could apply. The bond was clear and the claimant would have to drop his claim. He tried to call the claimant after he received the letter of 28 January 2007.

In answer to questions from the Tribunal he stated that he put the clause in the book on instruction from the personnel department and HR. The respondent did not have a legal department. Some pilots did not pass the command upgrade course. Twenty pilots were placed on the command upgrade course. Seven were placed in Dublin and eleven/twelve elsewhere. One /two did not have full eligibility. Out of the ten he thought all of them had claims against the respondent. When the started the process none had claims against the respondent. If a pilot did not show up for work the flight was cancelled and this resulted in considerable delay. The operations side of the business made changes.

In further cross examination he stated that if he had spoken to the claimant directly he would have made it clear to him that he had to drop the claims. At first he felt that he made it clear to the claimant. He thought that the bond was quite clear. The witness spoke to Cpt. JB and he told the claimant to contact him and that he would have to go through the normal process. The claimant was aware that he would have to sign a bond. He presumed that he received a copy of the memo dated 23 May 2007 to the claimant from Cpt. JB. He felt that it misrepresented the situation. He replied to him subsequently. He thought that the claimant might change his mind about signing the bond. He accepted that the claimant had got claims and was trying to move him on.

Under clause 6 pilots had to drop claims they had against the company. He assumed that the claimant was going to drop his claims. He reiterated that it was necessary for a pilot to drop their claims in order to be admitted to the command upgrade. He included Clause 6 so that he could get clarity on the situation. He accepted that the claimant had claims and the respondent was willing to put him into the process. At this stage he accepted that the claimant had claims and that the respondent would admit him to the process. He knew on 18 June that the claimant had claims but he did not know that he was willing to sign the bond. He wrote to the claimant and he was aware when he was writing this that the claimant had claims against the respondent.

He wrote a standard letter and the claimant was aware of the clause regarding the signing of the bond. If he had dropped his claims it would have allowed the claimant to sign the bond. There was no policy that you had to withdraw your claims and the claimant agreed that he could not sign the bond as it was. It was company policy that pilots had to sign the bond document. The bond document was revised a number of times during 2006 probably in the latter half of 2006. This bond would have been approved by the HR Department and the Personnel Department. It would have been checked over by D H. He considered it desirable that promoted pilots should be required to drop their claims as it needed to get clarity on the situation. The respondent wanted to know where it stood with the employee before they got promoted. He did not see that there was a great difference in asking people for a list of their claims or asking them whether they had no claims and he did not see a great difference between the two. He asked them to confirm that they had no claims. He agreed that he was responsible for the current bond including all of the clauses in it. The reason he included Clause 6 was he wanted to know before someone was promoted if they had claims. He wanted all promoted pilots to drop their claims against the respondent because it did not want to have legal claims involved in a promotion. This was a significant promotion to a very responsible job.

He accepted that as a matter of law and justice than an individual had a right to maintain claims against the respondent in law. A bond was in place February 2006 and before you underwent a command upgrade course you had to confirm that you had no claims against the company at that date. The respondent had a huge number of people who were more qualified and were more experienced than the claimant had at the time. He would not have expected Cpt. JB to identify any impediment to the claimant being promoted because the respondent had more people in the system. He would have expected Cpt. JB to retain the application on file at the time. It was not always the case that base captains would write to people. It was not until May that the respondent identified how it was going to do the command upgrade programme that year and he had identified that some pilots had more experience and longer hours than the claimant. Some had been waiting eighteen months to two years for a position on a command course. The claimant just had the minimum hours. He had looked for the biggest number of captains that any airline had ever sought in 2007. A number of pilots were further down the line than the claimant at the time. Base captains would generally know the pilots in their base and would generally talk to them face to face. He had never seen a letter from a Base Captain to anyone acknowledging a note. The claimant would have been able to update his hours in the system. The base captain also had access to that system. The system was continually evolving and it was colour coded. The pilots documented their hours and this could be downloaded to an Excel spreadsheet. As far as he could recall it had a button where they can press whether you are recommended or not recommended. When you have gone through all the different issues that a base captain would check before he would recommend someone, he checked they would have the hours. Good simulator and good line checks would be checked. The respondent would have prioritised people who had higher hours and would have also looked at the bases that they needed to be filled. All of those eligible may not be selected as there was a minimum requirement. It was well known that within the respondent it had far more people who were eligible than it could train. It was reasonable for the claimant to believe that he would be contacted and offered a slot on a training course as the claimant had inputted his hours on the Crewdock. The claimant was aware of how the system worked.

On 20 July all the spaces for the command upgrade courses were filled. He was not aware if they had all signed the bond. He was not sure what bond they signed. He was not sure if some of those selected in May would have been required to sign a bond. There had been a bond previously and he then thought that some of them did not have a bond and then the bond process was reinstated. Some pilots slipped through the net without signing the bond. It was only when they entered the process they would get a copy of the bond. The base captains would have been told at meetings. He could not recall if he did or did not put anything in writing to the base captains. The respondent had quarterly base captain meeting and it would have updated them on the way the process worked.

He did not say anything to the base captains about whether or not they should tell pilots that the policy was in existence. He did not give base captains any instruction as to what they should reply if a pilot asked them if they had to drop their claims to be promoted. A number of new bases were open at the time. Some of them may not have been aware about the way the thing worked, that pilots had to have the minimum hours, the number of commands that were available for the year and the steps that they had to go through.

The base captains administered the command upgrade process in their individual base. They would not have got involved in the paperwork regarding the letters and bonds. It was not part of their function to determine whether or not the pilot had claims against the respondent. All memos regarding the promotion prospects were addressed to either all pilots or all first officers. He agreed that it was clear in the letter to the claimant dated 11 October 2006 that the claimant must drop his

claims if he wished to be accepted on the command upgrade process. There was no memo issued in relation to this. Had he received this on 13 October 2006 he would have called the claimant on the telephone and try to talk to him. He never considered emailing the claimant to advise him that he could not be promoted if he had claims against the company and if he dropped the claims he would be considered. He was not dealing with the claimant in isolation and the respondent endeavoured to deal with a group of people. If the claimant had asked him if he had to drop his claims in order to be promoted he would have clarified exactly what the position was and that if he signed the bond which required him to drop the claims it would have moved forward. He was not sure when he received the e-mail from the claimant addressed to him on 29 November. The respondent replied to the claimant on 12 December with a sample copy of the bond. He was absolutely certain that he did not receive the e-mail dated 13 October until New Year's Eve. He received a vast number of e-mails, which he scanned and filtered. It was not normal practice for pilots to contact the respondent by e-mail. They usually communicated by letter and a telephone call was the normal way to communicate. His e-mail was available to staff and he received e-mails. Put to him what Dublin pilots must do in order to qualify for one of the positions he responded that they just reapplied. If you were an existing captain or first officer and you wanted to transfer to Dublin you could apply. On 18 October 2006 the respondent announced that it had more positions available than people in Dublin who had the minimum requirement for the command upgrade. It had approximately twenty positions and just ten or eleven who would have had the minimum requirements. One or two of the co pilots had called to say that the bond had not been enclosed. This was re-issued to the people who had the minimum qualifications. The letter dated 13 October reissued to the claimant on 24 November as the bond was not sent with the original letter. His colleagues called the claimant and informed him that PB had his letter and he PB would be in contact with the claimant in the next ten days or so. On 12 December 2006 the claimant received the letter for the third time with questions one and two on it. He received a response from the claimant on 14 December 2006 and the claimant asked must he withdraw all or any complaints that he had made to the High Court. It was clear from the bond that the answer was yes. The answer to the second question was yes

When asked where it specifically stated that pilots must drop their claims before the Labour Relations Commission and before the Labour Court he replied as you have not responded to my letter of December 12 within the specified deadline and you will not be considered for command training at this time. He then stated it did not explicitly answer the question. It was quite clear that pilots had to sign the bond. He had stated it three times in three letters that was sent to the claimant. He replied to the claimant's letter of 14 December 2006 on 22 December 2006 and informed him that he had not replied to his letter of 12 December 2006. He wanted to call the claimant to resolve the matter.

If the claimant asked him did he have to drop his claims he would have told him face to face that he had to sign the bond. He had asked the claimant to call him and when he had not telephoned him he was surprised to receive e-mail from him. Normally the base captain would be the person who would deal with the matter. He felt that the base captain would have been able to talk to him about the process. Both personnel and the base captain were in the same building. The claimant should have been constantly in contact with the base captain. He did not intend Cpt J.B to speak directly to the claimant about the bond. He expected that they would discuss the flying part of it. He expected that when the claimant spoke to Cpt. JB that the matter would move along. He did not have any discussion with Cpt. JB about the claimant after he sent the email to the claimant suggesting that he contact Cpt. J B.

In answer to questions from the Tribunal he stated that in consultation with personnel he would have put those two questions into the letter. He would have discussed it with DH and they would have been in charge with dealing with the bonds. Historically there have always been bonds and they would evolve and that was the first clause he was involved in, specifically the bond that had Clause 6 in it. The witness and DH would have decided to put the clause in the bond. He did not think that the chief executive would have been involved in it and he thought that EW would have been aware of it as well. The respondent does not have a legal department. He and DH took it upon themselves to put the clause into the letters. Eighty-two officers were placed in the first batch. These were UK and European based and no pilots on the course were Dublin based. Two positions were available in Dublin. The respondent was trying to get everyone in place for February/March 2007. There were the seven people in Dublin and then to fill the course it would have just filled in another couple of places from some of the other bases. Eleven or twelve pilots in Dublin were eligible. Some of them did not have the proficiency in the simulator in recent checks and one or two did not have the full eligibility. He did not know how many had claims against the company. He thought that possibly all of them had but he was not quite sure. Before they commenced they all had claims but when they started some of them did not have claims. They signed the bond. The only reason that the claimant did not fall into that category was because he would not sign the bond. The command process was the same for all respondent pilots. The UK and European based pilots were the first pilots to enter this process and they had to sign a bond including Clause 6. You had to sign the bond so that was an impediment to every pilot in every base. There were pilots in other bases who had more hours and were with the respondent longer and they would not have got a position on the course in 2006. The Irish pilots completed the upgrade in early February 2007. The respondent was not aware of claims of victimization by the claimant. The respondent did not know how many had claims against it and there was a press release at one stage, which indicated that there was many millions potentially related to these cases and that was a problem for the respondent. He did not know why he did not specifically ask each pilot if they had claims and what they were. Often things happened quickly and the respondent put together the document.

Those who had more hours would be dealt with ahead of those who had fewer hours. He agreed that the claimant met the criteria, he had the hours and everything that was needed in relation to the experience that the witness stated was necessary. Cpt TO said that the claimant was someone that met all of the other criteria. Asked why the claimant was not entered into the process he replied that he thought that the claimant undertook the flight in September 2006 and the courses had ceased and there was no more planned until April 2007. The respondent wrote to the claimant and invited him to apply for the process. There was no argument about the claimant's competence as a pilot. Until the claimant waived his rights to bring claims against the respondent he was going nowhere until he had signed the bond. . None of the first officers on the first tranche that were trained had any civil claims against the respondent. He recalled having a conversation with Cpt. JB. He told the claimant to contact Cpt. JB and he would have to go through the normal process. He did not say that there is not an f..... company in the world that will promote someone who is suing them. He presumed he received a copy of a memo sent from Cpt. JB to the claimant on 27 May 2007. He wrote to the claimant on 29 May 2007 to try and move the situation along. He was surprised to receive the letter on 18 June 2007 because it clarified that the claimant was prepared to sign exactly the same bond as the seven Dublin based colleagues. The respondent accepted that the claimant had got claims. He would not have had to sign the bond immediately before he started and the situation would have been reviewed with him assuming he had been successful at that. He was puzzled when he received the claimant's resignation on 29 June.2007. He did not

make any efforts to contact him to resolve the matter because the last time he tried to call him he had not returned his call. He received a letter from the claimant on 10 July 2007

He felt that it would have been worthwhile for the claimant to pursue the grievance procedure and he responded by letter of 12 July 2007. He did not know if it would have changed the outcome for the claimant. His experience of DOB and the chief executive was that they tended to be very fair and once something was brought to their attention they tended to be quite compassionate. They had often done things, which surprised the witness, and they treated people very fairly. It may well have been the case that if the claimant followed the grievance procedure that it could have been worthwhile. He found DOB very compassionate in his treatment of individual pilots.

The deputy director of the personnel unit (DH) gave evidence that the company does not deal with trade unions and only deals directly with employees and employee groups.

The company was in process of converting its aircraft. The training programme for changing the fleet was logistically significant and it was the practise of the company to have a bond signed by employees for conversion or communal training. To proceed to the promotional pool from 1st Officer to Captain a bond was to be signed by all applicants. The bond included a clause, clause 6, which confirmed that the pilot had no claims against the company. DH stated that the company wished to know where it stood with its employees due to the lack of information the company had regarding the claims. Several amendments were made to the bond due to representations from the pilots.

DH considered that the wording of letters sent by the claimant, and other pilots, was drafted by the trade union IALPA and that this was a part of their agenda of delay and obstruction. DH believed that the claimant was one of the trade union's 'foot soldiers'. DH considered that the letters were an attempt by the union to trap the company into more victimisation claims and was nothing to do with the claimant's desire to be promoted to Captain. There were no promotions from 1st Officer to Captain in Dublin in 2006. In 2007 a number of pilots included on the LRC list signed the bond and were promoted.

The claimant agreed to sign the bond in a letter, dated 18th June 2007 and the company considered that the claims under the claimant's name to have been dropped. The company wrote to the claimant on 27th June 2007 to offer him a place on the command upgrade assessment. The company received the claimant's notice of resignation on 29th June 2007.

DH gave evidence that there were no performance issues with the claimant. The claimant had never come to him regarding the issue harassment and had not invoked the company's grievance procedure. The grievance procedure route in the company went from immediate supervisor and then to the level above. If necessary the employee can go the chief executive. . DH stated that the chief executive was not involved in the drafting of the bond. DH believed that the chief executive was approachable and that he knew many pilots by name.

DH disputed that there was any manipulation of the roster and contended that there are limits to the hours a pilot can fly. DH was not aware of any complaint by the claimant and the claimant did not seek to discuss his issues in person. The claimant left before he could be assessed for promotion.

Determination

The claimant is alleging he was constructively dismissed from his employment with the respondent company. Section 1 of the Unfair Dismissal Act defines constructive dismissal as:

“ the termination by the employee of his contract of employment with this employer whether prior notice of the termination was or was not given to the employer in the 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 contract of employment without giving prior notice of the termination to the employer ”

The burden of proof, which is a very high one, lies with the claimant. He must show that his resignation was not voluntary. The legal test to be applied is “an and or test”. Firstly, the Tribunal must look at the contract of employment and establish whether or not there has been a significant breach going to the root of the contract. If the Tribunal is not satisfied that there has been a significant breach of the contract it can examine the conduct of both the employee and employer together with all the circumstances surrounding the termination to establish whether or not the decision of the employee to termination the contract was a reasonable one.

The claimant made his claim for constructive dismissal under three separate headings:

- Deliberate underpayment
- Manipulation of the roster
- Denial of promotion

The Tribunal are satisfied that based on all of the evidence adduced that the claimant failed to establish that there was a deliberate underpayment of his wages. He failed to show that that issue was connected to his decision to resign.

Manipulation of the roster

The Tribunal are satisfied that based on all of the evidence adduced that the claimant failed to establish that there was in fact a deliberate manipulation of his roster or that that issue was connected to his decision to resign.

Denial of promotion.

The main issue in the case was the respondent’s refusal to allow the claimant to enter into the command upgrade process without first signing the company bond. In reality this meant that the claimant could not enter the command upgrade process whilst he had claims against the respondent. The Tribunal are satisfied based on the evidence of both the claimant and the respondent that the claimant had achieved all that was required of him to make him eligible to enter the upgrade process. The Tribunal are also satisfied that on the balance of probabilities the claimant was a pilot of the calibre who would have achieved his goal of becoming a Captain with the respondent company. It was conceded by the respondent that the claimant was a good pilot who had a bright future ahead of him.

The issue of the command upgrade assessment first arose in early 2006. The events that took place and the correspondence that went back and forth between the parties from that juncture, up and until the claimant resigned, was remarkable.

The claimant was required to sign a bond prior to entering into the upgrade process. The respondent was fully aware that the claimant could not sign the bond as he had claims against the company. It was aware of the existence of the claimant's cases but not the exact details of them. It made no attempts whatsoever to establish from the claimant what the claims were in relation to. Equally the claimant was fully aware of the company's attitude towards his union and unions in general. He did not take issue with its right to refuse to enter into negotiations with the union. The claimant was fully aware of the Supreme Court decision legitimising the company's stance on the unions. Despite that he continued to use his union to try and seek clarification on the issue of his lack of promotion. The respondent stated that they were of the view that the correspondence it was receiving from the claimant was in fact from IALPA and that IALPA were using the claimant as a means of getting the respondent to enter into negotiation with it. That may be correct. Despite this they seem to have been blinded by their own fear of being lured into entering into negotiation with IALPA and lost sight of the fact that they were also dealing with an employee with an extremely good record both as a pilot and as a colleague. As the claimant's employer it had a duty to try and meet the claimant's legitimate expectation of being allowed to enter into the upgrade process and had an obligation to clarify and deal with any obstructions that got in the way of that. The respondent repeatedly sent correspondence to the claimant requesting he answer questions "one" and "two" on the bond knowing full well that the answer to question one was in the affirmative and therefore he could not answer question two. It entered into a game of cat and mouse with the claimant taking advantage of his naivety and loyalty to his union.

On the other hand the claimant when cross-examined on the issue of his claims was surprisingly unable to confirm the number, type and status of any of the claims. The Tribunal are of the view that the claimant is a very principled and honourable man and it is for this reason that the claimant's inability to give any factual information about his claims is astonishing. The claimant placed his trust in his representative, IALPA. They had an obligation to prosecute all claims prepared by them on behalf of the claimant. They also had an obligation to inform the claimant in any change of status of those claims. This obligation was extremely important in and around the time the claimant was making his decision to termination his contract of employment.

It is very clear from the evidence of both parties that whilst the claimant maintained these claims against the company he was never going to be offered the opportunity of entering the command upgrade process. Even though the respondent contradicted itself on whether or not it was a policy of the company not to promote those who maintained claims against it the Tribunal are satisfied that the reality was, that regardless of whether or not a policy existed the claimant was never going to be allowed the opportunity of promotion whilst he maintained his claims. Furthermore, we find that the evidence of DH when he stated that there was "nothing blocking him progressing" and "that there a possibility that he would have been promoted" simply not credible. Whilst this matter must have been very frustrating for the claimant the respondent company were perfectly entitled to determine the appropriate legal criteria for promotion. If one of those criteria was that those who maintained claims against the company would not be eligible for promotion, they were within their legal rights to do so.

The respondent had a grievance procedure of which the claimant was fully aware. The claimant stated in evidence that he did not lodge a complaint about any of his issues in particular the issue of denial of promotion because ultimately the matter would end up on the chief executives desk and therefore there was no point. He stated that the company's view on the issue was initially created by the chief executive himself and had been adopted by everyone holding a position below him. The respondent conceded that the final port of call for complaints was the CEO but stated that normally a pilot would go to his base captain first and if a satisfactory solution was not achieved there the

complaint would work its way up the ranks until it reaching the CEO's desk. The respondent also stated that had the claimant come in person and spoken to them directly they would firstly have clarified the issue in relation to the other claims being no longer sustainable due to the Supreme Court decision. Secondly, they would have entered into talks with the claimant. The claimant did state in evidence that he found the CEO approachable. He had a conversation with him once about his difficulties with the conversion course bond and found him to be, contrary to common belief, amenable to discussion and approachable.

It is not for the Tribunal to say whether using the grievance procedure would have brought about a favourable result for the claimant. Equally it is not for the Tribunal to try and establish what the result might have been. The only matter the Tribunal must concern itself with is whether or not the grievance procedure was invoked. It is Tribunal precedent that where grievance and disciplinary procedures are incorporated in conditions of employment that failure to utilise the procedures by either party is fatal - reference (1) Conway .v. Ulster Bank Ltd UD 474/1981-. It is a well established Tribunal precedent that there is an obligation on the claimant to use that avenue to try and resolve issues prior to taking the final step of terminating his employment or at the very least the claimant should communicate his grievance before carrying out his decision to resign – Power .v. University of Limerick UD654/1991 The only exception is where there is proof of bias or unfairness justifying the decision not to invoke it. The Tribunal are satisfied that there was no evidence of bias or unfairness. The claimant had never, on his own admission, invoked the grievance procedure during his term of employment and his only dealings with the CEO in the past were in relation to the training bond. As stated previously he found him to be approachable about this issue.

The Tribunal find that there was no breach of the claimant's contract of employment, express, implied or otherwise. Furthermore the Tribunal find that the claimant's decision to terminate his employment prior to invoking the grievance procedure was not a reasonable one and whilst the Tribunal is sympathetic to the claimant and considers him to have been honest and honourable in pursuing the case, his claim in law must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

