

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE (Claimant)  
MN88/2009  
against  
EMPLOYER (Respondent)

CASE NO.  
UD94/2009

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr. M. Flood  
Ms. K. Garvey

heard this claim at Dublin on 23rd June 2009 and 15th October 2009

**Representation:**

Claimant: Mr. Mel Christle S.C. and Mr. Michael Conlon B.L. instructed by  
Mr. Tom Conlon, Solicitors, 14 South Leinster Street, Dublin 2

Respondent: Mr. Jerome O'Sullivan, J W O'Donovan, Solicitors, 53 South Mall, Cork

**The determination of the Tribunal was as follows:**

**Claimant's Case:**

Giving evidence the claimant stated that he has eighteen years experience working in car rental companies. He commenced employment with the respondent in March 2000 in the position of Sales Representative and he was based in the Stillorgan branch. At the time of March 2000 there were usually three employees but at times this reduced to two employees. The claimant worked opposite shifts to the supervisor who was the Branch Manager.

At the beginning of 2008 there were three employees in the office, the claimant, his supervisor and another employee (Ms. M). On any given day there were usually two employees present but on Mondays and Fridays all three employees were present. In May 2008, Ms. M vacated her position with the company. The result of this was an increased workload and often meant that there was only one employee managing the office when the other employee had a day off.

On the 19<sup>th</sup> September 2008 the claimant received a facsimile from the Managing Director informing him that due to decreased volumes in business the respondent was seeking voluntary redundancies. The claimant was asked to contact the Managing Director by the 26<sup>th</sup> September 2008 if he was interested. The claimant responded by email dated the 24<sup>th</sup> September 2008. He

requested details of the redundancy package and he requested clarification on the future of the Stillorgan branch if he did not accept voluntary redundancy. At this time the claimant was unaware that the supervisor had been offered and accepted a voluntary redundancy package. At that point in time the claimant believed the supervisor was commencing maternity leave at the end of November 2008 and he queried if cover was in place for her maternity leave. The office was open seven days a week and it would not be possible for him to avail of a day off unless cover was arranged.

The claimant did not receive a reply or details of the redundancy package. He spoke briefly with the Managing Director on the 26<sup>th</sup> September 2008. The Managing Director confirmed receipt of the email but as he had been ill he told the claimant that he would attend to the matter the following week. He reassured the claimant that the deadline concerning the offer of voluntary redundancy would be extended. However, the Managing Director did not contact the claimant the following week. The claimant again copied the email of the 24<sup>th</sup> September 2008 to the Managing Director on the 8<sup>th</sup> October 2008 requesting that the issues he had raised would be addressed and clarified to enable him to make a decision.

The only correspondence the claimant received from the Managing Director pertained to a 10% salary reduction. The claimant wrote letter dated the 18<sup>th</sup> November 2008 in which he raised several issues and set out his position at length. At the time of writing this letter he was aware the supervisor had accepted voluntary redundancy and was due to permanently finish work on the 28<sup>th</sup> November 2008. There was no cover in place if the claimant was to become ill. As he did not receive a reply he re-sent the letter by email on the 22<sup>nd</sup> November 2008 and copied it to the respondent's Financial Officer.

The claimant did not receive a response to this email either and on the 28<sup>th</sup> November 2008 his supervisor finished in her employment. From then on an employee who worked as a driver assisted the claimant when possible by answering the telephone, although it was not part of his duties to do so. The office closed at 5.30pm but due to the workload the claimant often worked until 7pm or 8pm to complete the work. The claimant worked each day on his own including Saturday and Sunday. By early December 2007 matters were grim as the claimant was unsure of what would happen and it was a time of uncertainty for him. The Managing Director was the person he needed to speak to about the problems but the claimant had not received a response to his correspondence.

On the 3<sup>rd</sup> December 2008 the claimant received a telephone call from Managing Director. The claimant expressed concern that he had not received a response to his correspondence. The Managing Director told the claimant he would meet him in the Stillorgan branch on the 8<sup>th</sup> December 2008 to discuss all the issues with the claimant. The claimant was nervous in the approach to the meeting and he spent time preparing for the meeting. Although a specific time had not been arranged the Managing Director had informed the claimant that he would be in Dublin on business and would call to him in the office. As time passed with no appearance by the Managing Director the claimant contacted the airport branch and was informed that the Managing Director had flown back to Cork. He had failed to meet with the claimant as arranged. The claimant was annoyed as he was finding it difficult to perform all of the duties in the office and he did not know what the future held. Although the claimant carried out all the work it was not possible to provide the same level of professionalism and he found the situation very stressful and frustrating.

The claimant attempted to speak with Managing Director on the 9<sup>th</sup> December 2008 but was informed by the Financial Officer that he was out of the office. The claimant explained to the Financial Officer that the Managing Director had failed to meet with him as arranged. The Financial Officer told the claimant that the Managing Director would probably meet with him the

following week when he was in Dublin again. This was approximately twelve weeks since the claimant had first emailed the Managing Director. The claimant felt that he had no choice but to resign as of the 9<sup>th</sup> December 2008. He emailed his resignation to the Managing Director and copied it to the Financial Officer. The claimant again attached a copy of the letter of the 18<sup>th</sup> November and stated that although he set out various serious problems relating to his employment he had not received a response. The claimant further stated that he felt he had no option but to resign given that none of the issues he had raised had been addressed and he did not feel that he could continue to work for the respondent.

The claimant subsequently received an acceptance of his resignation from the Managing Director dated the 11<sup>th</sup> December 2008 but this did not mention any of the claimant's correspondence. The claimant believed two employees were appointed to work in the Stillorgan branch after his resignation. He gave evidence pertaining to loss.

During cross-examination the claimant stated that he was unaware that the Managing Director was abroad for four weeks and only returned to the office on the 3<sup>rd</sup> December 2008. The claimant accepted that when the Financial Officer received a copy of his resignation he asked the claimant if he would reconsider but by that time the claimant had made his decision.

It was put to the claimant that the Managing Director did not have a problem with the claimant closing the office and leaving the telephones unanswered during his lunch break. The claimant replied that the Managing Director was very clear that telephones must be answered within three rings.

The claimant accepted that he had sent an email to another office informing them that the Stillorgan office was closed on a Sunday. The claimant was forced to do this as he had already worked nine days straight when he closed the office that Sunday. The claimant accepted there were days when the office was quiet but he was still required to open the office.

It was put to the claimant that the Financial Officer also dealt with matters relating to redundancy. The claimant expected that the Managing Director would reply as staff had been requested to reply to him directly concerning voluntary redundancies.

In reply to questions from the Tribunal, the claimant stated that when he copied the email to the Financial Officer in November 2008 he was not informed that the Managing Director was abroad nor was he informed of this when he spoke with the Financial Officer concerning his resignation on the 9<sup>th</sup> December 2008. The claimant did not recall receiving an out of office reply from the Managing Director's email but as that would have been significant he felt he would have copied it if he had received it.

### **Respondent's Case:**

Giving evidence the Managing Director informed the Tribunal that he is based at the respondent's head office in Cork. The respondent had ten offices and employed 105 staff. Throughout the last two years the respondent has been fighting for survival due to the recession and has also lost a franchise. A number of branches have closed including the Stillorgan branch, which closed on the 24<sup>th</sup> July 2009. The respondent company has had a reduction of 40% in its business between 2007 and 2008. The staff in the Stillorgan branch were made redundant with the exception of one employee who has flexible duties.

The Managing Director is not proficient in computer skills. Regarding the claimant's emails of the

24<sup>th</sup> September and 6<sup>th</sup> October 2008 the Managing Director stated that he recalled speaking with the claimant but could not remember specifically if they had discussed redundancy. The Managing Director believed that if the issue of redundancy was raised he would have referred the claimant to the Financial Officer. The Managing Director confirmed that he wrote to staff about the Board's decision to reduce salaries above a certain level by 10%.

The Managing Director was on annual leave from the 31<sup>st</sup> October 2008 to the 3<sup>rd</sup> December 2008. His email had an out of office reply during this time. The claimant's supervisor would also have been aware that he was on annual leave. The Managing Director had sight of the claimant's letter of the 18<sup>th</sup> November 2008 when he returned from annual leave. He had many matters to attend to on his return and he had to prioritise his work for the next number of days including the claimant's email. He arranged to meet the claimant on the 8<sup>th</sup> December 2008 but he was delayed at another meeting on that date and was under time constraints as he had a return flight to Cork that day. He was unable to meet with the claimant as planned but he fully expected to be able to meet with the claimant another day to discuss matters. When the claimant's supervisor accepted the offer of voluntary redundancy the Managing Director saw this as an opportunity for the claimant even though the level of business had declined. He was shocked when he found out that the claimant had resigned. A Branch Manager from the airport had to attend to the Stillorgan branch after the claimant's resignation. The Managing Director believed the claimant should have raised matters through his supervisor but this had not been done. If the Managing Director had an opportunity to meet with the claimant he would have encouraged him to take over the reins and would have provided him with every support possible.

During cross-examination the Managing Director accepted that the letter of the 19<sup>th</sup> September 2008 requested that the claimant contact him if he was interested in the offer of voluntary redundancy. On receipt of the claimant's email of the 24<sup>th</sup> September 2008 he did not inform the claimant that he should contact the Financial Officer. He accepted that the Stillorgan branch was without a manager from the 28<sup>th</sup> November 2008. The claimant was the likely person to manage the office when the supervisor accepted voluntary redundancy and the Managing Director intended to discuss this with the claimant. With hindsight the Managing Director could see that he should have telephoned the claimant on the 8<sup>th</sup> December 2008 when he was unable to meet with him and arranged another date.

In reply to questions from the Tribunal, the Managing Director stated he was unsure if he had read the letter of the 18<sup>th</sup> November 2008 by the time he received the claimant's resignation. He did not contact the claimant to discuss his resignation, as he was aware the Financial Officer had spoken to the claimant.

The Financial Officer gave evidence that he received a copy of the resignation letter from the claimant. When he spoke to the claimant about his resignation he asked the claimant if he would reconsider but the claimant would not change his mind even though the Financial Officer pointed out to the claimant that he thought it was an opportunity for him to manage the office. He also explained to the claimant that the Managing Director had been delayed on the 8<sup>th</sup> December 2008 but would be travelling to Dublin the following Monday and could meet with the claimant then. The claimant was unaware of this prior to submitting his resignation. The Financial Officer confirmed that many members of staff contacted him about the voluntary redundancy package.

During cross-examination the Financial Officer confirmed he had also received a copy of the claimant's letter dated the 18<sup>th</sup> November 2008. He did not contact the Managing Director about this letter while he was on annual leave and he did not feel it appropriate to contact the

claimant as the letter was addressed to the Managing Director. He also thought that the claimant was aware the Managing Director was on annual leave and that the claimant was not expecting a response until December 2008. The Financial Officer did not contact the claimant to provide details of the redundancy package offered as he only provided this to staff who contacted him directly.

A Branch Manager gave evidence that she was asked to attend at the Stillorgan branch after the claimant's resignation. There was a good team in the Stillorgan branch and she needed only a few days to sort matters out. The Stillorgan branch had a quarter of the number of bookings that the airport branch processed and she managed the office in Stillorgan when the drivers were attending to other duties. The witness did not have problems with the workload and she could put a note on the door for five minutes to go and get lunch. She was based there for three months, enjoyed it and requested to remain working there.

During cross-examination the Branch Manager accepted that she would not have known the level of business for the Stillorgan office from September to the end of November 2008. It was confirmed by her that when she managed the Stillorgan branch the office had started to close on a Saturday and Sunday.

**Determination:**

The Tribunal carefully considered the evidence adduced at the hearing. Based on the evidence the Tribunal is satisfied that the claimant provided several opportunities to the respondent to address and clarify his concerns and issues. The Tribunal finds that the claimant was constructively dismissed from his employment and awards the claimant compensation in the sum of €38,040.00 under the Unfair Dismissals Acts, 1977 to 2007.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 does not arise this being a case of constructive dismissal and the claim is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)