EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:	**CASE NO.**
EMPLOYEE - ***claimant***	UD937/2008

against

EMPLOYER - ***respondent***

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Sheedy

Members: Mr. D. Hegarty
Ms. P. Doyle

heard this claim in Cork on 27 May 2009
and 22-23 July 2009

Representation:

Claimant(s): Mr. Edmond Smith, Independent Workers Union, 55 North Main Street, Cork

Respondent(s): Ms. Deirdre Cummins B.L. instructed by Mr. Micheál O Mulláin, O'Flynn Exhams, Solicitors, 58 South Mall, Cork

The determination of the Tribunal was as follows:-

Opening statement:

The claimant's representative read an opening statement into evidence. (*Before doing so, a copy of the statement was given to the respondent's representative so as they could highlight any objections to the content of same or object to it being read into evidence, if they so wished. While objecting to some of the content of the written statement, the respondent's representative consented to it being read into evidence and said that their objection to it would be dealt with in oral evidence*).

The claimant's representative read in part from the statement that the kernel of the claimant's case was that the impact of the respondent's behaviour was such as to sunder the relationship of trust that is implied in a contract of employment. Having exhausted all avenues to have his grievance against the respondent and the respondent's CEO addressed in an even, fair-handed and transparent manner, the claimant felt that as a last resort, he was left with no option but to resign.

The respondent employed the claimant from 1999 as a career guidance counsellor/group facilitator

until he was forced to resign on 28 March 2008.

The respondent is a state funded body and the claimant worked in its Local Employment Services section (*hereinafter referred to as L.E.S.*). The function of L.E.S. was to facilitate a person's return to the labour market. The claimant spent the last four years of his employment working in the Programme Development Section of L.E.S. The Programme Development Section was establishedby the respondent to run group interventions and has responsibility for the "Job Club". The Job Club was an initiative funded by FÁS. In December 2004, FÁS informed the respondent's then CEO that they were withdrawing funding for the Job Club on the basis of it "not having sufficientnumbers of participants and not meeting participant's needs". The claimant disagreed with the FÁSanalysis and statistically proved it inaccurate. He discovered that FÁS had not conducted any analysis on which to base their claim. He expected the respondent's new CEO (*hereinafter referredto as AOS*) to continue with the formal appeal against the decision of FÁS on the grounds that theirreasoning was inaccurate and the FÁS claims had damaged his reputation.

As a result of the FÁS decision, there were four threatened redundancies, two of which were attributed to the closure of the Job Club. This made the claimant's working environment very unsettling and uncomfortable. AOS was informed by the claimant and others that these two Job Club positions could be saved if an appeal against the FÁS decision was launched. She informed them that the respondent's Board of Management were aware of a successful appeal of a Dublin area against the decision to close their Job Club and that, Board of Management minutes would reflect this. However, when the claimant obtained these minutes, he discovered that no such record was reflected therein.

The co-ordinator of L.E.S. (*hereinafter referred to as GMcG*) tried to defend the reputation of the claimant and others and sought the reversal of the FÁS decision. The Job Club staff, including the claimant, wrote to the respondent outlining their problems and gave full agreement to the stance taken by GMcG. They also suggested a meeting to discuss these problems but same was ignored.

AOS informed the claimant that the respondent's Board of Management had formally decided not to appeal the FÁS decision though there was no record of this in Board of Management minutes. Despite repeated requests, AOS failed to take any action whatsoever, refused to have a proper hearing into the facts and denied the claimant the right to appeal against the FÁS decision, insisting that this was a Board of Management decision. Various subsequent letters from the claimant to the respondent's Board of Management requesting that they protect his reputation were ignored. On 5 March 2007, the claimant was informed in writing by AOS that any further attempt by him to contact the Board of Management directly would result in disciplinary procedures being brought against him.

The claimant commenced a grievance against AOS – *the CEO* – on 30 May 2007. A request was made for the respondent's grievance procedures and AOS provided the "Good Employment Practice grievance procedure" to the claimant. However, this differed to the contract of employment grievance procedure and contained strict timeframes. On 31 May 2007, the claimantand a work colleague wrote to the respondent suggesting that POBAL appoint an independent person/body to investigate the matter. Despite being the subject of the grievance, AOS telephonedthe Board of Management's representative of POBAL to discuss the appointment of an independentthird party to investigate the grievance, which was brought against her. POBAL informed AOS that any request to nominate an independent person to investigate the grievance could only come from the Board of Management.

On 10 July 2007 and without consultation, the Chairman of the Board of Management decided that a conciliation conference, hosted by a conciliation service, be utilised by both parties. The claimant subsequently discovered that AOS had contacted the conciliation service on behalf of the respondent. The claimant saw the involvement of AOS in the grievance process – who was herself the subject of the grievance – as totally unacceptable and inappropriate and raised questions about the respondent's commitment to handling the grievance procedure in a fair and even-handed manner. However, the Chairman dismissed the claimant's concerns regarding these breaches of procedure as "not material".

On 11 July 2007, the claimant made it clear to the respondent that he was not seeking mediation. He was not allowed to have any part in the choosing of an independent person who would be acceptable to all parties, despite his request to this effect. On 26 July 2007, the Chairman wrote to the claimant and informed him that he – *the claimant* – had declined the service of the mediation service. This was untrue, as the claimant's difficulty was only with the process of the appointment of an independent person.

The claimant agreed to the conference with the conciliation service. The conciliation service examined the issues and concluded that an investigation was needed. The respondent was informed of this recommendation on 30 November 2007. In February 2008, the Chairman informed the Board of Management that the conciliation service had recommended that mediation was not an option but did not inform them that an investigation had been recommended. Despite the recommendation, no investigation was ever held.

On a personal level, in February 2007 the claimant took an appeal within the internal procedures of FÁS in relation to the damage to his reputation. The FÁS Client Service Commissioner investigated the appeal and his final report on the matter showed that FÁS' reasons for closing the Job Club were not substantiated on any grounds. FÁS accepted the findings of the Commissioner and were fined the maximum amount.

On at least fifteen occasions, the claimant informed the respondent that he was suffering from stress and could produce a medical certificate in relation to same but at no time did the respondent request him visit their doctor. He raised the issue with the Health & Safety committee who ignored his communications. It subsequently transpired that AOS was the Health & Safety Officer. The claimant also wrote to the Chairman of the Board of Management outlining the stress this issue was causing him.

When the claimant became concerned as to the respondent's intentions regarding his work role, he wrote to the Chairman seeking reassurances that there would be no change to his role pending the outcome of his grievance. However, on 26 November 2007, AOS informed the claimant that he was being assigned to the L.E.S. sub-office in another resource centre (*hereinafter referred to as the G area*). This office was only available on a part-time basis. The proposed placement was in effect a demotion for the claimant and was in no way a proper or adequate use of his skills as a mediator and facilitator. The claimant was informed that he would be working in this sub-office for two mornings per week but his duties in this sub-office were never clearly outlined to him. The proposal reduced the claimant's standing in the eyes of his peers. There were no proposals or clarity offered to the claimant as to how he would occupy his time when not in the sub-office as proposals for group work were being blocked and the right to appeal against same was not accommodated.

The respondent offered the claimant four counselling sessions but he felt that this was totally

unsuitable as he was seeking an investigation in to the matters surrounding his employment. The respondent's position was that they offered stress management workshops and four hours of counselling to help employees deal with stress. However, AOS met with L.E.S. staff to assess their needs but did not meet or consult with the claimant or his work colleague in relation to same.

On 11 July 2007, the claimant had stated his lack of faith in the Board of Management. He contended that the Chairman was aware of his dissatisfaction with the respondent's handling of the Job Club, and in particular FÁS' stated reasons for the closure of same, this which called in to question the claimant's competence. On 31 May 2007 – which was the earliest possible stage – the claimant expressed his preference for an independent investigation and for POBAL to nominate an independent person acceptable to both sides for this purpose. On three occasions, the claimant requested copies of correspondence between the respondent and POBAL but these requests were ignored. When the documentation was received by the claimant from POBAL through a Freedom of Information request, it confirmed his fears, namely that POBAL would be agreeable to nominate an independent person at the request of the Board of Management and the Chairman had delegated the interaction with POBAL to AOS, who was herself the subject of the grievance.

When the claimant objected to the process used to appoint the conciliation service, the Chairmantook this to mean that the claimant was declining the service. The claimant understood from thisaction that the Chairman was denying him – *the claimant* – access to the grievance procedure. When the Chairman informed the claimant of the appointment of the conciliation service, the Chairman did not seek any information about his grievance. On 15 August 2007, the Chairmanwrote requesting the grounds of the grievance and repeated this request in subsequent correspondence, giving different reasons each time. The claimant stated his willingness to give thegrounds of his grievance to the conciliation service. The Chairman replied blandly or not at all tothe claimant's correspondence in relation to the involvement of ASO in the handling of the processand of being denied information. The claimant's three written requests to the Chairman for a guarantee that his role would not be changed during the grievance process were only replied to afterhis role had been changed.

The Chairman was asked to facilitate the claimant in his effort to appeal the decision of the Management Sub-Committee, which had turned down a proposal for group work. The Chairmandid not respond to this request. The claimant complained several times to the Chairman about theundue delay in the process and the effects this was having on his health. At no stage did the Chairman claim that the claimant was responsible for the delay. In February 2008, the Chairmanwas asked to distribute a letter to the Board of Management, which outlined the claimant's dissatisfaction with the handling of the process but the Chairman did not comply with this request. The Chairman ignored a request that he – *the Chairman* – rather that AOS deal with the claimant onbusiness matters. AOS responded to this request, stating that she had been asked to do so by theChairman.

The inaction of AOS, the refusal to act on the issue of the claimant's reputation, the refusal to reply to letters, the interference of AOS with POBAL and the conciliation service, the refusal to allow an agreed third party investigate the matter, the refusal to accept the recommendation of the conciliation service, the mishandling of the grievance procedure and the refusal to attend a rights commissioner as outlined in the respondent's grievance procedures but forcing him to submit his case before the Employment Appeals Tribunal had a very detrimental effect on the health and well-being of the claimant. He felt, as a last resort, that he had no option but to leave his employment, which he did on 3 April 2008 after a prolonged illness. At no time was the claimant offered the services of the respondent's doctor.

The claimant contended that the impact of the respondent's behaviour on him had been such that this conduct had destroyed the relationship of trust and confidence. The claimant had been a high achieving and committed member of the respondent's staff. He had never been the subject of disciplinary procedures, censured or reprimanded in relation to the performance of his duties or his general conduct in the workplace, and had always sought to raise and process any issues he had with the respondent through proper and agreed procedure.

Summarising the claimant's position, the representative read, in part that …

1. the respondent failed to protect the claimant against unjust attacks by a third party – FÁS – even though the claims by FÁS impacted negatively on the claimant's professional standing and reputation
2. the respondent failed to deal with the issues and concerns raised by the claimant
3. at different times, the respondent referred to two different grievance procedures and failed to follow either when the claimant raised a grievance
4. the respondent failed and refused to follow the grievance procedure contained in the claimant's contract of employment
5. the respondent showed bias and uneven treatment in its response to the claimant's grievance as against the CEO, who was herself the subject of the grievance. The CEO – whose actions contributed in a large way to the claimant's grievance – was involved materially and inappropriately in dealing with the grievance.
6. the respondent refused to accept and implement the recommendation of the independent mediator appointed by them that the claimant's grievance should be examined by an independent investigator.
7. the respondent refused to attend the rights commissioners in relation to the claimant's grievance despite same being contractually provided
8. the respondent failed and refused to provide the claimant with information that he requested
9. the respondent made incomplete, inaccurate and misleading claims to the claimant, which he became aware of on receipt of the respondent's records thought a Freedom of Information request
10. the respondent sought to change the claimant's role to a lesser position than that enjoyed by his colleagues, without any consultation with him
11. the respondent failed to discharge its duty of care towards the claimant and failed to have policies and procedures to protect his welfare, health and safety
12. the respondent at various times ignored the claimant's communications or only responded to him after repeated efforts on his part to elicit a response

The cumulative impact of the respondent's behaviour on the claimant was that he lost all trust and confidence in the respondent and in its willingness to conduct its relations with him in a professional, reasonable and honest manner.

In reply, Counsel for the respondent stated that the claimant's resignation was of his own volition. The circumstances of the claimant's case as alleged by him did not exist in the respondent.

The respondent employed the claimant as a mediator in 1999. He was employed in the respondent's Local Employment Services Section (L.E.S.). This Section was essentially funded by FÁS and reliant on FÁS for funding.
The Job Club was an initiative set up within L.E.S. but at no point was it ever suggested or maintained that the claimant was employed solely for the purpose of the Job Club. The criteria

forthe operation of the Job Club were provided for by FÁS and as such, the respondent had no role indictating how the Job Club would be run. The decision to withdraw funding was made by FÁS initially in December 2004. The then respondent's CEO (*since deceased*) made representations toFÁS to rescind this decision but these were rejected, so ultimately, he sough time for thewinding-up of the Job Club initiative. The Job Club was granted a few months for its winding-upand it was finally wound-up in March 2005.

The genesis of this claim is the FÁS decision to withdraw funding for the Job Club in December 2004. The respondent had no control over this. There were criteria which had to be adhered to in the operation of the Job Club. Those operating the Job Club, including the claimant, did not adhere to these criteria. This failure would have contributed to the FÁS decision to withdraw its funding.

The current CEO (*AOS*) – who is the person whom the grievance was lodged against – began her position with the respondent in September 2005. This was nine months subsequent to the FÁS decision to withdraw its funding. The respondent's position was that they were neither obliged norentitled to seek a further review of the position of FÁS in respect of its funding of the Job Club.

L.E.S. was entirely funded by FÁS and so was entirely reliant on FÁS for its existence. The respondent had no desire to jeopardise a relationship that could, in turn, have jeopardised the jobs of those employed in L.E.S. Everyone who had been employed in L.E.S. were retained and all received their usual wage/salary increases, as was their entitlement.

With respect to the grievance procedure, this was initiated by the claimant and a work colleague and was done in conjunction with one another in May 2007. This was almost two and a half years after the FÁS decision of December 2004. At that time, the Chairman of the Board of Management was JOC. The respondent's position was that the claimant tried to dictate the terms of his employment and the terms of the grievance procedure to be used.

The grievance complaint was initiated in May 2007. In October 2007, the Chairman was still seeking the reasons for the grievance from the claimant but the claimant did not furnish same. From correspondence, it was apparent that the claimant and his work colleague made effective efforts to frustrate the grievance procedure by repeatedly taking issue with proposed methods of the resolution procedure.

The difficulty for the respondent was that AOS was part of the grievance despite not being in the employment of the respondent at the time the FÁS decision was made. As the CEO, AOS was involved in the day-to-day running of the respondent while the Board of Management were involved in an external capacity. Essentially, when the grievance was lodged directly against AOS, there arose difficulties in implementing the grievance procedure. Any involvement by her in the initial stages of the procedure was merely an attempt to seek a resolution to the matter.

The claimant and his work colleague, by letter of 31 May 2007 to the respondent, suggested that an independent person be appointed to investigate the matter. In contacting POBAL, it was the intention of AOS to implement this suggestion. The subject matter of the grievance had not been heard at this stage. It was only in October 2007 that the specific nature of the grievance became known to the respondent. Thus, while the claimant maintains that the respondent frustrated the grievance procedure, the respondent's position was that the actions of the claimant contributed to its delay.
The respondent's position was that there was an inordinate delay from the claimant in initiating the

grievance. When AOS commenced in her role as CEO in October 2005, the Job Club was considered a closed issue by that stage, and it was entirely unreasonable to expect her to take up this cause, particularly as far as the respondent was concerned. The claimant had not been affected by the FÁS decision as far as his career prospects were concerned.

Essentially, the respondent's case would be that the claimant had a subjective view that something defamatory had been said about his character. This was never the respondent's view, nor did the subsequent actions of the respondent reflect this view.

Replying to initial queries from the Tribunal, the claimant confirmed that prior to employment with the respondent, he had been a community employment supervisor for two years and also had a variety of short jobs before this. The L.E.S. was FÁS funded but the claimant was not employed by FÁS.

Counsel for the respondent explained that L.E.S. was a division of the respondent within which the claimant was employed as a mediator. The Job Club was an initiative set up within L.E.S. to provide certain services to the unemployed. FÁS dictated the terms of how the Job Club was to operate. FÁS funded L.E.S. and by extension the Job Club. It had been FÁS who decided that the criteria were not being followed and so they decided to terminate the Job Club. The staff of L.E.S. continued in employment and the respondent incurred debts to continue the service. The debts were accrued for the paying of salaries and these debts remain outstanding today.

A contract of engagement existed for the Job Club. This contract outlined how the job was to be done and reserved the right of FÁS to withdraw funding from it.

<u>Claimant's case:</u>

In his sworn evidence, GMcG explained that initially in October 2004, FÁS advised that they were discontinuing the funding of the Job Club and cited their reasons for same. GMcG believed that these reasons were factually incorrect. He raised this with the respondent's then CEO and the Board of Management. The Board of Management decided that the matter should be appealed and GMcG wrote to FÁS in relation to this. He was informed that there was no appeal process but that FÁS would allow an ad-hoc appeal. GMcG kept the Board of Management informed of the lack of progress in relation to the appeal on a monthly basis. Then, the then CEO died. FÁS advised that the matter would be parked until a new CEO was appointed. The new CEO – AOS – came in September 2005 and GMcG briefed her on the progress of the appeal at that stage. AOS then took over the handling of the appeal and in early 2006, GMcG was advised that same was not been proceeded with. GMcG's reaction to this was one of disappointment and he referred to the people who had been employed in the Job Club. Their feelings had been that its cancellation had been an attack on their reputation. Even if the FÁS decision was to be accepted, same should still have been taken up with them. The respondent's view was that the closure of the Job Club had been completely satisfactory.

An annual business plan for the Job Club was prepared and forwarded to the Board of Management for their approval. As each Job Club programme was developed, a detailed submission on it was sent to the Board of Management for approval, and if approved, same was commenced. GMcG reported in writing to the Board of Management on the progress of a programme on a regular basis. Also, the staff who operated a Job Club programme were asked annually to make a verbal presentation to the Board of Management. Every Job Club programme followed a Board of Management decision and their written approval for same. Members of the Board of Management

attended some of the Job Club sessions and gave inputs to them so it was reasonable to assume that the Board of Management were fully aware of what was happening in the Job Club.

AOS took over as the new CEO in September 2005. She also took over the appeal against the FÁS decision and GMcG heard nothing further until he was informed in January 2006 that the appeal was not being pursued.

As far as GMcG was aware, FÁS had not conducted an investigation into the success or failure of the Job Club. As he knew, a letter was sent by FÁS explaining why the funding was being withdrawn. The members of the Job Club then tried to have an input into this but with no success. If AOS had questioned FÁS on how they had come to their decision to withdraw funding, she had not consulted the Job Club members about it, and GMcG was never asked to contribute to any investigation.

GMcG was unable to answer why the respondent had not investigated FÁS's decision to withdraw funding. However, he had advised them to ask the staff of the Job Club about their concerns about its closure. One of GMcG's reasons for this was because the closure was not genuine. His view was that if FÁS had advanced the assertion that the respondent had not honoured its contract with FÁS and if the respondent could show that these reasons were unfounded, then the decision to withdraw the funding should be challenged on the basis that it was an attack on the respondent. He had made this argument to the respondent. However, the respondent took a different view.

AOS never sough the view of GMcG but he offered it. He took the opportunity to do this, on her appointment as CEO. She said that she understood the issues and would pursue the appeal. GMcG heard nothing more until he heard that the decision to appeal had been rescinded. AOS had been aware of the successful appeal of a Dublin area against the decision of FÁS to close their Job Club. GMcG had made her aware of this. At their meeting, it was confirmed to GMcG that the Board of Management was aware of the reversal of the FÁS decision for the Dublin area Job Club which was in similar circumstances to that of the respondent's Job Club.

GMcG had no idea what criteria AOS had used in deciding not to appeal against the FÁS decision. The only reasons for the withdrawal of the funding were those advanced by FÁS and GMcG maintained that he now knew that these reasons were false.

The respondent's Job Club was hugely successful and was one of the better performers. The claimant was one of the better mediators and was qualified in a number of ways in the functioning of the Job Club. This had been made known to the Board of Management in feedback from its users and in informal comparisons of other Job Clubs nationally.

There was no L.E.S. office in the G area to which it was proposed to move the claimant. He was being offered a room here with no facilities and no support as a mediator. Two previous efforts to set up a L.E.S. office here had been unsuccessful. GMcG thought that the assignment of the claimant to this office was a poor use of resources. The G area was an area of high unemployment. GMcG considered that an outreach centre could have been developed in the G area but he would not have sent a high achieving and most qualified mediator there as he would not had contemplated this to be a good use of resources. Also, at that time, most mediators were responsible for offices with staff, resources, a library, etc. and this was not available in the G area office, so such a move for the claimant would be seen as a lesser role by other mediators.

GMcG explained that a mediator was a role which evolved over the years. It was a general title for

someone who worked in career guidance with groups or on an individual basis and was a tie-up to employers. The Board of Management decided that a group approach was needed to meet people's needs. This was decided in the 2004 to 2006 strategy.

GMcG wrote to the Board of Management requesting a meeting for the staff of L.E.S. This was done after the reversal of the decision to appeal against the FÁS decision was made known to the staff. The staff made it known to GMcG that the decision not to appeal had a huge impact on their reputations and they felt that they were entitled to have their views heard in relation to the closure of the Job Club. They had grave issues and GMcG felt that their concerns warranted evaluation, and that the Board of Management should meet them to discuss their concerns. It would have been fair, ethical and prudent to do this.

GMcG was the claimant's line manager until 2007 and had never had to initiate a discipline issue against him. There had never been a reprimand against him on the performance of his duties. There had never been a complaint against him by the public, his colleagues or the Board of Management. He had received testimonials from the end-users of his service. In a formal evaluation of procedures, the claimant was rated in the top 5% of employees. He was regarded as an exemplary employee.

In cross-examination, GMcG confirmed that up to the time of his departure in May 2007, the claimant was certainly held in the highest regard by the Board of Management and the respondent.

The FÁS decision on the withdrawal of funding for the L.E.S. Job Club was communicated by letter dated 8 December 2004. GMcG agreed that the goodness and good work of the Job Club hadbeen acknowledged in this letter but also maintained that within same, the Job Club was been attacked and undermined. He acknowledged that the claimant's reputation was great and had beenacknowledged by the respondent. However, the claimant's concern was that if he was associatedwith a project that had not met the needs of clients and if this notion was left unchallenged, it wouldeffect his professional reputation. When queries if the comments had any effect, that the source ofthe comment had been from FÁS – *a third party* – and the respondent had no difficulty with theclaimant, GMcG replied that though the effect could not be measured, it had affected the claimant'srelationship with the respondent.

It was put to GMcG that the FÁS decision had been communicated in 2004 but the claimant had not resigned until 2008, thus his position had not been effected by the comments contained in the FÁS letter and he had not needed to leave the respondent, but GMcG replied that the claimant had not been happy. Based on concerns raised by the claimant and GMcG, a decision had been made to challenge the FÁS decision. GMcG had done this. He was clear in his mind that the Board of Management was happy to leave the challenge to the FÁS comments in his hands. Then, the then CEO had died in office and AOS had taken over as the new CEO. Nothing further was heard for four months and then they were advised that the appeal was not being pursued. This was okay if it had been the decision of the Board of Management but GMcG told them that they should at least meet the staff.

Per letter dated 25 October 2005 from the Manager of FÁS Community Services to AOS, it stated in part therein "I confirm that the Job Club will not be funded after the 31st March 2005". Despite getting this definite word that funding would be finally withdrawn, GMcG maintained that it could not have been the case that the matter of the closure of the Job Club had concluded by 2005 as the Board of Management continued to discuss it at Board meetings. The position had been that therespondent was pursuing an appeal against the decision of FÁS but FÁS had refused to

engage in same. However, as long as the appeal was being pursued, there were lots of options available. When put to GMcG that he had been trying to dictate to the respondent on the appeal, he replied that he had been operating at the direction of the previous CEO and the decision of the Board of Management to pursue an appeal. FÁS could have been forced to change. He had tried to get FÁS to engage and felt that there had been a number of possibilities. GMcG and the claimant finally accepted the FÁS decision.

GMcG denied that his actions in the pursuit of the appeal had been on the grounds of the effects of the FÁS comments on the claimant and that of the claimant's co-worker. He had pursued the appeal on the grounds of the comment that the Job Club was not meeting public needs. The staff had been wronged by this comment.

GMcG agreed that he had been on secondment from FÁS to the respondent and his contract with the respondent had been terminated in May 2007. He agreed that the termination of his contract had impacted on all of the staff. GMcG also confirmed that he had taken a case to the Employment Appeals Tribunal against the respondent but same had been dismissed on the grounds that the respondent named by him had not been his employer and so the Tribunal had no jurisdiction in the matter.

GMcG accepted that FÁS funding was essential to L.E.S. However, FÁS was a public agency and their decisions had to be made on proper grounds and must be held accountable. When put that FÁS dictated the criteria for the funding, GMcG contended that the withdrawal of the funding had been based on misstatements. The reasons cited by FÁS were untrue and the staff knew this. The respondent should also have known this and should have examined it in a proper, professional manner. However, GMcG denied that he had ever sought to dictate to the Board of Management on this.

It had been proposed that the claimant would move to an L.E.S. office in the G area. He had not gone because he had been on sick leave when instructed to move there. Subsequently, a part-time employee had gone there.

Replying to the Tribunal, GMcG was unable to say where FÁS had received the information contained in their letter of 8 December 2004. They had visited the L.E.S. centre on a few occasions. Normally, group work was done first in the Job Club and then one-to-one follow-up support was done.

In his sworn evidence, the claimant stated that he had never been censured in all of his work, but was frequently praised.

The claimant had not been aware that FÁS were evaluating the Job Club and he had never been involved in an investigation. Initially, the FÁS decision to withdraw funding had not been accepted by the respondent and GMcG had been asked to bring an appeal against this decision. Then, it was heard from AOS that the appeal was not being pursued. The claimant was not aware of any report of an investigation being conducted. From memory, his understanding was that AOS said that she would question the decision of FÁS so he believed that the appeal was ongoing at that stage. At a meeting in 2006, AOS had specifically said that the successful appeal of a Dublin area against the decision of FÁS to close their Job Club was recorded in the minutes of a Board of Management meeting. Through a Freedom of Information request, it was discovered that no such minute existed.
The claimant was not consulted or made aware of any investigation into the Job Club. It had not

been the respondent's initial position to accept the decision of FÁS to withdraw the Job Club funding. The claimant regretted the subsequent position that they took. He could have shown them that all of the grounds given by FÁS for the withdrawal of the funding – not meeting client's needs and not meeting clients on a one-to-one basis – were factually incorrect.

AOS did not get the views of the claimant in relation to the letter from FÁS. He and his work colleagues heard in March 2006 that the respondent was not going to appeal against the FÁS decision. They wrote to the Board of Management in May 2006 but did not get a reply. They wrote again in July 2006. Then the claimant's manager – GMcG – received a letter from AOS stating that the matter had been closed to the satisfaction of the respondent. GMcG then wrote to the Board of Management about the concerns of the staff and in September 2006, they consulted a solicitor. In February 2007, they emailed AOS and said that if the respondent was not going to assist them in appealing against the claims made by FÁS, they were going to pursue the matter through external channels. However, the respondent never met them or gave them five minutes in relation to their concerns.

The claimant and his colleagues lodged a complaint with the FÁS Client Services Commissioner. The Commissioner found in their favour. He said that the FÁS claims were without foundation and he criticised FÁS for not replying to the claimant's letters. No survey had been done to substantiate the claim that the Job Club had not met the needs of clients. FÁS subsequently wrote accepting the report of the Commissioner. The Board of management had approved of everything that the Job Club had done. Now, the respondent was the only one who does not accept that the closure of the Job Club was incorrect.

The claimant lodged a grievance against the CEO – AOS – in May 2007. The grievance was given to the Chairman of the Board of Management – JOC – to handle. The respondent had immediately replied and said that they would appoint an independent person to the process. On 31 May, the claimant asked that POBAL appoint this independent person due to the lack of confidence he had inthe Board of Management. On 10 July, JOC informed the claimant that a conciliation service wasbeing appointed. On 11 July, the claimant wrote and requested sight of the correspondence that hadpassed from the respondent to POBAL and the conciliation service. These correspondences wererequested on three occasions but were not received. The claimant also requested that he beinvolved in the appointment on the independent person because of his lack of trust in the Board ofManagement.

The first time the claimant was asked for the grounds for his grievance was on 15 August 2007. He had not delayed the process or refused to give the grounds for the grievance and did so in October. The first time that he had heard the accusation that he had delayed the grievance procedure was at the Tribunal hearing on 27 May 2009. He had found it suspicious that JOC would not give him the correspondence that had passed between the respondent and POBAL, and through a Freedom of Information request, he discovered that the matter had been delegated to the CEO. He requested to know what other breaches of procedure had occurred but receive no reply to this. On 22 June, the claimant had emailed AOS and said that the respondent was delaying the process and the delay was affecting his health

The claimant believed that it was in September 2007, through a Freedom of Information request, that he became aware that the CEO had contacted POBAL. He discovered that this communication had occurred in June 2007. The claimant had not been told that the Board of Management could request the appointment of an independent person. He also discovered that the Board of Management had only been informed of his grievance in February 2008. When the claimant had

eventually learned of the appointment of the conciliation service, he had written to JOS and stated that he was not unhappy with the appointment of the service but on the way that they had been appointed.

On 30 November, the claimant met with the conciliation service and they recommended that an investigation take place. When the claimant contacted the conciliation service on 4 January 2008, he was told that JOS was not returning their telephone calls. To the best of his recollection, at the end of January, he was referred to the rights commissioners for the operation of his grievance procedure. His belief was that JOS had informed the Board of Management that the conciliation service had found that mediation was not appropriate. However, he did not inform them of the conciliation service's recommendation that an investigation be conducted. The claimant was disappointed when he found that he had no choice but to refer his complaint to the rights commissioners. From 31 May 2007, the respondent had said that there would be an independent investigation but they had refused to attend same. The respondent's grievance procedures – and the terms of the claimant's contract of employment – stated that grievance complaints "will" be referred to the rights commissioners.

The claimant sent fifteen or sixteen letters to the Chairman of the Board of Management, the CEO and the Health & Safety Committee in relation to his health. He only received one reply to same on 4 December 2007. He found this to be very demeaning and stressful. The respondent's Health & Safety statement talked about dignity in the workplace. The claimant suffered insomnia, irritation, stomach complaints and weight-loss from the stress. He worked with the marginalised who were themselves a highly stressed group, but he himself was ignored by the respondent. In his letter to the Health & Safety committee, the claimant had written that he felt bullied by being ignored by them. He felt it bewildering, as the respondent was a social inclusion company. In February 2007, the claimant attended his doctor and she had no doubt that he was suffering from work related stress. The claimant was also getting psychotherapy at that stage because he felt that things were very stressful. He was operating in a state of near exhaustion and raised this several times with the respondent.

The claimant was not surprised when he learnt that he was being moved to the G area. On three occasions, he had written to the Chairman asking that no change be made to the conditions of his employment while the grievance was ongoing. It was the CEO who told him that he was being moved to a sub-office, which had no facilities. He found this move to a backwater a disappointment and a punitive measure, as he was a high achiever.

The claimant believed that he was misrepresented to the Board of Management. He wrote to the respondent and asked if he had been misrepresented elsewhere and if the condition of his health had been communicated to a third party but did not receive a reply.

In cross-examination, the claimant confirmed that he commenced employment with the respondent in 1999 and worked in L.E.S. from then until 2008. He agreed that during his employment with them, the respondent had part-sponsored his further educational pursuits such as training and development 2000/2001, a Masters in Group Facilitation 2002/2004 and a post-graduate Diploma in Integrated Psychotherapy Studies 2006/2007. He added that, at his own expense, he had studied reality therapy and French, this latter subject to assist in his work with emigrants from the Cameroon. It was put to the claimant that the sponsoring of these educational pursuits from 2001 until 2007 was not the action of someone who had lost faith in an employee but the claimant replied that it was essential for the staff of L.E.S. – whose focus was on the unemployed – to do such training so as to benefit customers. However, he agreed that the respondent would not have

invested in him if they had doubted his ability.

The claimant could not accept the contention that it was unreasonable that he had remained in the respondent's employment if he had been so aggrieved by the contents of the FÁS letter of 8 December 2004 which communicated the decision to withdraw the funding for the L.E.S. Job Club, and the lack of a defence to the contents of this letter by the respondent. The claimant worked with marginalised groups and found the work attractive and it had taken him four years to show FÁS that their analysis of the Job Club was wrong.

The claimant described his work with marginalised people as working in a high stress area rather that working with high stress people. He enjoyed the work. He contended that good staff had suffered because of the actions of the respondent. In L.E.S., the claimant had worked as an outreach facilitator and had run several group interventions each year.

When the respondent sought redundancies following the withdrawal of the FÁS funding, the claimant found himself in a difficult position. Initially, there was a threat of four redundancies. It was put to the claimant that the respondent had sought voluntary redundancies and that he had continued in employment and accordingly suffered no loss of pay.

The FÁS letter of 8 December 2004 was the genesis of the claimant complaint. The claimant said that it was disingenuous to maintain that he had allowed three years to pass before commencing his challenge to this. He had believed that the FÁS decision was being challenged until AOS told him that same was not being pursued. The delay in the challenge was down to the Board of Management. When asked why he had not pursued the matter more vigorously if he found that it was so serious to his reputation, the claimant replied that he found it most egregious.

On 15 February 2007, GMcG received a copy of a letter from AOS, which was being sent to FÁS stating that the services of GMcG were no longer required. The decision that GMcG's services were no longer required had been made three months prior to GMcG getting notice of the termination of his contract with the respondent, in May 2007. The termination decision had been made before the Board of Management was informed. The claimant agreed that he made no secret of his distaste at the treatment of GMcG and had sent at least four letters about it. When put to him that he was instrumental in organising this protest at the treatment of GMcG, the claimant agreed that he was certainly not pleased about it.

The claimant confirmed that he wrote a letter dated 3 August 2007 to members of the Health & Safety committee. In the second paragraph of same was stated, "I am reiterating my issue. Themanagement style of the company and in particular the disgraceful treatment of [*GMcG*] is causingme undue stress and is having an adverse affect on my health and well-being. It is my opinion thatthe treatment of [*GMcG*] is unethical and unprincipled and to have to witness a human being receiving this kind of treatment is immensely distressing." (*sic*) The claimant highlighted the firstparagraph of his letter where he had written "in relation to my previous correspondence (6th June2007, 26th June 2007) to express my grave concern at the fact that issues of health and safety that Ihave raised in relation to my employment with [*the respondent*] have neither been acknowledgednor responded to. I am deeply disappointed to have been ignored in this fashion." (*sic*) The "reiteration" in the second paragraph related to his previous letters, which had been ignored.

The claimant agreed that by letter dated 14 August 2007, AOS replied to his letter of 3 August 2007 wherein she advised of the availability of a workshop of stress management and an employee

support programme, from the respondent. An officer of the Health & Safety committee had brought the stress of the staff of L.E.S. to AOS's attention. She had met all the staff of L.E.S. except the claimant and the claimant's colleague, who were excluded. At that time, the claimant told AOS that he was getting counselling at his own expense.

In letter dated 30 October 2007 from the claimant and his work colleague to the Chairman of theBoard of Management, they had written, "we also find that the views we expressed to the H & Scommittee in relation to [*GMcG*] have been misrepresented. The CEO had used our letters to claimto FÁS and the Board that the actions of [*GMcG*] are causing us stress. She is well aware that thisis not our view, and that any workplace stress we are suffering is as a result of the company's treatment of [*GMcG*]. In our view [*GMcG*] had been an outstanding and upstanding of LES, andwe believe he has been removed without reason or process. This is both stressful and destabilising." (*sic*) The claimant maintained that it was a major breach of trust on them that theBoard of Management was informed of their views. It was put to the claimant that in his evidence,he maintained that his stress was with the respondent and was work related yet his letter indicatedthat his stress was as a result of the treatment of GMcG. The claimant replied that their point wastheir stress had been as a result of being misrepresented. Being misrepresented, havingprogrammes blocked, being sent to G area, the treatment of GMcG, etc. had all been a source ofstress. It was deeply stressful to be ignored when he had asked to put his views forward.

As far of the claimant could remember, other employees were stressed by the treatment of GMcG. He agreed that he had rallied the troops in support of GMcG. He believed that AOS had gotten rid of GMcG before she had brought this decision to the notice of the Board of Management, and she had not followed up on the appeal against the FÁS decision to withdraw funding, so there was a slow erosion of faith in her. It was put to the claimant that the lodgement of his grievance had been over the leaving of GMcG rather that the contents of the FÁS letter of 8 December 2004 but the claimant replied that if this had been the case, he would have said it.

Referring to an email dated 14 March 2008, which had been sent to the claimant and his work colleague, in same was written in part by another employee of L.E.S., "I know that you would have liked me to have gone out sick …". It was put to the claimant that either he or his work colleague were encouraging people to go out sick and the email suggested connivance on the part of employees to pretend to be sick. The claimant absolutely denied this and stated that he had not engaged in connivance, though he did not remember the email. He had no contact with people as he had been on sick leave himself.

The claimant confirmed that he owns a company (*hereinafter referred to as Fus T & D*). He denied that this company had been operating by the time he had resigned from the respondent. Referring to a Fus T & D webpage from February 2008, it was highlighted that this company was advertising courses in two urban areas in Ireland to commence on 26 March and 29 March 2008 respectively. The claimant confirmed that this was his advertisement and he had placed the advert. It was an attempt to get the business started but it did not actually happen until October 2008. The attempt to get things up and running in February failed because the claimant did not have the energy for it. The advert was not an indication that the courses were up and running in February and that he had wanted out of the respondent at that stage. However, he agreed that he was considering other options for himself by February, and even earlier, but he could not be hung for this. When put that constructive dismissal, as defined under the Act, states that an employee had to or is compelled to leave their employment, but, in this instance, the advert seemed to have forethought, the claimant rejected this. He had attempted to start Fus T & D in February but had failed. It was now up and

running. He agreed that Fus T& D had received work from the respondent prior to Christmas 2008 but recent programmes seemed to have been blocked and he did not believe that this had anything to do with external circumstances.

The award made against FÁS by the FÁS Client Services Commissioner was given to a charity, which was nominated by the claimant and his work colleagues. The parties to the complaint had been the claimant and FÁS and, by letter dated 17 April 2009, the Director General of FÁS accepted the recommendation of the FÁS Client Services Commissioner. In an email to AOS, the respondent had been told about the complaint but they did not want anything to do with it and so did not partake in it.

In a letter dated 22 May 2007 to AOS the claimant said the following:

"I am currently in the process of preparing a grievance against you as CEO of (the respondent). In the light of previous correspondence to CCLES staff stating that no staff member may contact the members of the Board of Directors or disciplinary procedure will be taken, would you please advise as to whom the grievance correspondence should be forwarded to."

The claimant told the Tribunal that he had asked AOS in March how he would raise a grievance and that he told her formally on this date. When it was put to him that this was two-and-a-half years after the closure of the job club he replied that the cause of the grievance was the respondent's acceptance of F.A.S.'s position, that this had been discovered in 2006 and that at end March 2006 he had seen the record of a 17 February 2005 meeting of the respondent's local employment service sub-committee.

The claimant stated to the Tribunal that he had felt that the respondent's chairman (JOC) should have responded.

On 15 June 2007 AOS wrote to BL confirming that, at the chairman's request, the matter had been brought to the attention of Pobal. On 10 July 2007 wrote to the Tribunal stating that Pobal had stated that the issue was the responsibility of the board of the respondent and that, in light of this, the services of RT (mediation) had been retained.

The claimant said to the Tribunal that he had asked that POBAL appoint external investigators. On 11 July 2007 he (and BL) wrote to JOC saying that the arrangements that had been made were not acceptable. The letter stated that several requests to the respondent for information had neither been answered or acknowledged and that they were now in the process of making their third FOI request to Pobal. Describing this state of affairs as "lamentable", the letter continued by justifying their lack of faith in the board by pointing to: what they regarded as "the unnecessary seeking of four redundancies"; the board's failure to protect their reputation when it was "sullied by F.A.S."; the "shocking treatment" of McG; the "concomitant threat of disciplinary action against L.E.S. employees" when they wished to speak on McG's behalf: and, finally, JOC's own statement in a meeting with F.A.S. (according to F.A.S. minutes of the meeting) that the job club would be run 'the F.A.S. way or not at all". The letter continued:

"This statement, in our opinion, helped pave the way for F.A.S. to close the Job Club on spurious grounds - all of them false – and put us (absolutely top class and high achieving employees) in the invidious position of appearing to be responsible for the loss of two jobs. We are certainly not agreeable to the Board dealing with this issue, or being involved with it in any way. We would even point to the behaviour of presenting us with a fait accompli regarding this process as reason to

arouse deep unease in us.

We believe that (the respondent) has serious problems, greatly exacerbated in recent times. It has an outmoded management culture, and behaves in a high handed way that is radically at odds with its mission. Mediation, in our view, is akin to putting a band-aid where radical and meaningful measures are needed. We are bringing a grievance, not seeking mediation."

The claimant told the Tribunal that JOC "was bringing in an outside person" without consultation or acceptance.

The Tribunal was next referred to a letter dated 26 July 2007 from JOC to the claimant which contained the following:

"I refer to your correspondence of the 11th July 2007 and note that you have declined the services of (RT) Mediation and Training.

If you wish to pursue the matter please contact your Trade Union."

At this point in the Tribunal hearing the claimant reminded the Tribunal of the letter dated 11 July 2007 to JOC from the claimant and BL which contained the following:

"In response to your letter of the 10th July 2007 we write to inform you that the arrangements that have been made and presented to us are not acceptable. In any fair grievance procedure the process has to be agreed by both sides. We were not consulted on this process or included in it, therefore we do not accept it.

We request a copy of all correspondence between the company and Pobal on this issue. Upon reviewing same, it is our intention to contact Pobal with our reasons for requesting their intervention in this process, namely that we have a grievance against the CEO and we are not confident with the Board's involvement on a number of grounds. Moreover, we request a copy of all correspondence between the company and (RT) Mediation and Training."

The Tribunal was now referred to a letter dated 2 August 2007 to JOC from the claimant and BL which contained the following:

"We refer to your letter of 26th July 2007. We believe you are under a misapprehension as to the contents of our letter of 11th July 2007.

We wish to be understood clearly. We have no personal objections to (RT) mediation and Training. Nor does our letter say otherwise, so we believe it was incorrect of you to state that we were declining their services. In our letter, we do object to a process being presented to us without our input or agreement. To be clear, we have not declined the services of (RT) Mediation and Training – we have declined their being presented to us without consultation. We wish to have an arbitrator appointed by an independent body because of the previous involvement of the Board of Management with the issues in contention.

As regards to the position relating to Pobal, you have advised us that they do not wish to be involved in the process. We have asked for documentation in this regard and as yet you have not forwarded same. We repeat our request for this documentation.

Finally, we believe that the use of the Trade Union is a matter for the person bringing the grievance. It has been our decision to date not to apply to the Trade Union for support – if we feel we need their assistance we will apply for it….

We request a response to this communication by Wednesday 10th August 2007. If we do not receive a response to same we will assume that the company does not intend to grant us our legal right to a fair grievance procedure and we will be obliged to pursue it elsewhere.

Finally, we wish to point out that we commenced this grievance on 22nd May 2007. The undue delay in the resolution of same is, in our view, the responsibility of the company. Moreover, webelieve this undue delay has had a grevious(sic) effect on our health, well-being and dignity."

The Tribunal was now referred to a letter dated 14 August 2007 to JOC from the claimant and BL which contained the following:

"We have not had a response to our letter of 2nd August 2007, in which we reiterated our point that we had no objection to (RT) Mediation and Training, but were not agreeable to the process proceeding in a way that was not agreed by both parties.

We refer to your correspondence to the CEO, of 31st May 2007, in which we wrote "You will appreciate that in the interest of fairness we would have to agree, in advance, any procedure toaddress our grievance." As this letter was written a number of months ago, and as the Company didnot demur from our request, it was natural to assume the Company was willing to comply with sucha reasonable request. We are disappointed that this has not transpired to be the case.

Moreover, in our letter of 2nd August 2007, we repeated a request for information that was important to our grievance and it has been denied us, as has been the case with other information requests regarding our grievance in the past.

Disappointed though we are by the actions of the company, we have decided that in the best interests of the company and its clients, and to help bring an end to a period that has been extremely stressful for us, has led to stress induced illness on our part, and which has been drawn out over an extensive period, we are willing to engage with (RT) Mediation and Training, provided we can agree terms of reference. We propose that these agreed terms of reference include agreement on whether the findings are binding or non-binding, and what happens with the findings".

A letter dated 15 August 2007 from JOC to the claimant contained the following:

" I refer to your letters of the 2nd August 2007 and 14th August 2007.

(The respondent) is and always has been committed top deal with any grievance that any employee of the Company may have in relation to their employment with the Company.

In your letter of the 11th July 2007 you state that you have a grievance against the C.E.O.

Under the terms of the grievance procedure set out in your Contact of Employment, the C.E.O. is involved in the process. Obviously, as your stated grievance is against the C.E.O., the C.E.O. will take no part in the grievance procedure.

I intended to take the place of the C.E.O. in relation to this stage of the procedure, but I note from your letter of the 11th July 2007 that you have no confidence in the Board's involvement on a number of grounds, which grounds you do not specify.

At this stage I suggest that you set out in writing your exact grievance, which you allege against the C.E.O. I will then consider that grievance and discuss same with you and the matter can either be referred to (RT) Mediation and Training or referred to the Labour Relations Commission as provided for in the grievance procedure."

At the Tribunal hearing it was put to the claimant that he had attempted to dictate the grievance procedure. He replied that he had asked that an independent person examine the grievance but that he had found that AOS was running the grievance in that she had contacted Pobal to say to appoint someone to investigate her. He added that he had found that AOS had also been in contact with RT and that all he wanted was a process that he trusted. He felt that the respondent was trying to blame him for this.

The Tribunal was now referred to a letter dated 31 August 2007 to JOC from the claimant and BL which contained the following:

"Thank you for your letter of 15th August and the letter of 10th July in which you offer the services of Round Table Mediation and Training to expedite the grievance process against the CEO of (the respondent).

We would like to restate as per our letter of 14th August, that we have decided that in the best interests of the company and its clients and to help to bring to an end a period that has been extremely stressful for us, has led to induced stress illness on our part and has been drawn out over an extensive period, (we first notified you of our grievance against the CEO in May 2007), that we wish to take your offer of the services of (RT) Mediation and Training and engage with same.

We are now asking you to facilitate this process as soon as possible for the reasons outlined above."

By letter dated 11 September 2007 JOC acknowledged the 31 August letter saying that he was "now preparing the papers to submit to (RT) Mediation and Training with a request for them to act as Arbitrator to deal with your grievance". In this letter JOC stated that he was repeating his 15 August request that the claimant set out in writing his exact grievance against the respondent's CEO and added:

"In this regard, your letter of the 22nd May 2007 to the C.E.O. states that you were in the process of preparing a grievance procedure(sic) against the C.E.O., but no grounds of grievance were set out in your letters.

I await hearing from you in this regard."

When it was put to the claimant at the Tribunal hearing that JOC had written to him seeking heads of grievance, the claimant replied:

“We did not trust him. He had been delegating to the C.E.O.. We were happy to give information to (RT). We said there were two grievance procedures. He did not answer. We had no confidence in him.”

The Tribunal was now referred to a letter dated 11 October 2007 to JOC from the claimant and BL. It underlined that the grievance against the C.E.O. had commenced in May 2007 and expressed disappointment that JOC had not responded to the allegation that “the unnecessarily drawn out nature of this procedure” was causing “intense stress”. The letter also set out the following heads of grievance:

1.Communications or lack thereof by the CEO
2. Handling of the closure of the Job Club by the CEO
3. Misleading/ inaccurate information by the CEO
4. Abdication of duty of care by the CEO towards employees
5. Health and safety issues

The claimant alleged to the Tribunal that JOC had been doing all he could to delay. Asked about his proposed transfer to the Glen, the respondent’s representative put it to him that he had consented to it. He replied:

“That’s an incredible statement. I saw it as a slap in the face. I’d asked (JOC) to protect my role during the grievance.”

The claimant added that JOC had not protected the claimant’s role and that “progress was being blocked” by AOS. The claimant added:

“I was trained to run groups. I was being put into an office at a lower level than my grade. That was a shocking blow to me. The work there would be largely clerical in nature. I asked for confirmation on paper because I was building a grievance. My role was being downgraded. I’d asked that this not be done. I asked them to review it.”

It was put to the claimant that he had not established that he had been entitled to leave the respondent. He replied that he had loved his work and had stayed as long as he could but that his grievance had been blocked as evidenced by being first asked for grounds three months after he had raised it. He was not satisfied with JOC’s handling of the matter. He alleged that the respondent had ignored him, sidelined him and downgraded his role to a clerical one. He claimed that the respondent “tried to wear me down by attrition” and that the respondent “is now the only party that supports their grounds for closing the job club”. Describing this as “very demoralising and demeaning”. Saying that “we were denied access to the board”, the claimant recalled contacting Pobal and making F.O.I. requests. He said that trust and confidence were required in his employment and that “every avenue was blocked”.

Giving sworn testimony, AOS (the abovementioned C.E.O. of the respondent) said that she had held the position since September 2005, that her job was to oversee the completion of programmes/projects, that she could only spend five hundred euro without approval and that she answered to the board of the respondent. She said that she had little knowledge of the intricacies of the job club for which the respondent had been contracted by F.A.S.. When it was to close a three-month extension was obtained so that it could be closed in an orderly fashion. She was hardly aware of mounting debts and the respondent was “a money-in, money-out company with no

reserves". The respondent did not want the job club to close. AOS was trying to see if the respondent could get money from F.A.S.. She went to a bank to try to get an overdraft to keep going.

F.A.S. had paid the respondent every two months. The respondent had to look at the mounting debt. Ultimately, no bank loan was forthcoming. The respondent had to look at redundancies and, wanting to save as many jobs as possible, held trade union consultation. The respondent wanted to talk. AOS sought a voluntary redundancy. That was paid. Reduced hours were sought. One person transferred to the Pobal side of the business. However, the respondent was still short of money. The respondent was reliant on F.A.S. for funding and could not run all its services without such funding. F.A.S. even had a representative on the respondent's board.

The claimant was one of a number of mediators funded by F.A.S.. The claimant was not affected by the closure of the job club and continued to be contracted to the respondent as a mediator.The job was to assist people into employment. The respondent had to have a funding body behind it so that it could implement government programmes. The respondent provided services under contract to bodies such as F.A.S., Pobal and H.S.E..

The only debt that the respondent incurred related to the closure of the job club. The claimant was expected to work as a mediator with regard to job opportunities. Staff were needed to be flexible as to location. Moving around could and would happen. The respondent's opinion of the claimant was that he was diligent in his work. The respondent was always satisfied with his work. The respondent invested in the claimant's further education. F.A.S. had generous training for staff. Between 2001 and 2006 the claimant got about forty per cent of the training budget allocated for fifteen staff. AOS never questioned the claimant's performance and fought to keep all staff including the claimant.

The respondent went through "a turbulent time" after the sudden death of the previous C.E.O.. McG was due to go back to his employer in May 2007 but did not do so until November 2007. McG was turning up as if still employed by the respondent. That caused upset. Staff were distressed because of instability in the respondent. The respondent retained a psychologist. Each staff member had a right to four sessions. The claimant was told of this. Regarding grievance procedure, sought to put in place a more robust system. The respondent was committed to supporting policy development regarding employment. The respondent dealt with a trade union (S.I.P.T.U.) and was developing a new policy handbook in the context of an 'excellence through people' award that the respondent was seeking. The work done by McG (assisted by the claimant and BL) gained recognition.

Asked when she had first heard of the claimant bringing a grievance against the respondent (and against her in particular), AOS said that she could not recall but had been aware of it and thought that it was about 20 May 2007.

Asked about her involvement in the grievance process, AOS replied that the chairman had asked her to contact Pobal and that she had also contacted RT but that she "exited then" and this was why correspondence had not gone to her.

Regarding the claimant's transfer to the Glen, AOS said that the Glen was a disadvantaged district which needed assistance, that the respondent had "wanted to do all it could" and that she had asked for the claimant to "do that function". She thought the claimant had no difficulty but he went out sick and gave no service for the Glen. AOS told the Tribunal that a client service officer did clerical

and research duties whereas a mediator could offer career advice and that the respondent was testing to see if the service was viable. The claimant never refused to do it but he went sick. The respondent had not forced him to go. The respondent had wanted to discharge its duties to the local community. It sent a part-time person but the uptake from the community was quite low and the service was discontinued.

Regarding grievance procedure, the respondent sought to put in place a more robust system. The respondent was committed to supporting policy development regarding employment. The respondent dealt with a trade union (S.I.P.T.U.) and was developing a new policy handbook in the context of an ‘excellence through people’ award that the respondent was seeking. The work done by McG (assisted by the claimant and BL) gained recognition.

Asked when she had first heard of the claimant bringing a grievance against the respondent (and against her in particular), AOS said that she could not recall but had been aware of it and thought that it was about 20 May 2007.

Asked about her involvement in the grievance process, AOS replied that the chairman had asked her to contact Pobal and that she had also contacted RT but that she “exited then” and this was why correspondence had not gone to her.

Regarding the claimant’s transfer to the Glen, AOS said that the Glen was a disadvantaged district which needed assistance, that the respondent had “wanted to do all it could” and that she had asked for the claimant to “do that function”. She thought the claimant had no difficulty but he went out sick and gave no service for the Glen. AOS told the Tribunal that a client service officer did clerical and research duties whereas a mediator could offer career advice and that the respondent was testing to see if the service was viable. The claimant never refused to do it but he went sick. The respondent had not forced him to go. The respondent had wanted to discharge its duties to the local community. It sent a part-time person but the uptake from the community was quite low and the service got discontinued.

Regarding grievance procedure, the respondent sought to put in place a more robust system. The respondent was committed to supporting policy development regarding employment. The respondent dealt with a trade union (S.I.P.T.U.) and was developing a new policy handbook in the context of an ‘excellence through people’ award that the respondent was seeking. The work done by McG (assisted by the claimant and BL) gained recognition.

Asked when she had first heard of the claimant bringing a grievance against the respondent (and against her in particular), AOS said that she could not recall but had been aware of it and thought that it was about 20 May 2007.

Asked about her involvement in the grievance process, AOS replied that the chairman had asked her to contact Pobal and that she had also contacted RT but that she “exited then” and this was why correspondence had not gone to her.

AOS told the Tribunal that she had become aware that the claimant had set up his own training and development company after a February 2008 website reference in the claimant’s name to a certificate programme commencing in Cork on 26 March 2008 and in Limerick on 29 March 2008. The claimant had acknowledged that it was him.

The Tribunal was now referred to a letter dated 28 March 2008 to AOS from the claimant which

contained the following:

“I have no alternative other than to resign from (the respondent).

My ongoing dispute regarding the inaccurate assessment by F.A.S. regarding client processing and your failure to address these issues through the internal appeals procedures has exposed me to health issues and also has placed my professional credibility and career prospects at risk.

I have exhausted all internal mechanisms for resolving my grievance regarding appealing the F.A.S. decision to withdraw funding from the Job Club.

As Chief Executive you failed to take any action whatsoever to process my appeal, thereby finding me guilty of F.A.S.’s accusations without a proper hearing or investigation of the facts, denying my right of appeal. You also failed to follow the internal grievance process.

I wish to advise you, and the Board of Directors, that I am taking a case for constructive dismissal to the Rights Commissioner.

I wish to provide you with notice of my resignation. My termination date, therefore, is 4th April 2008.”

Asked if the respondent had put work the claimant’s way, AOS said that the respondent had approved some under a mediation training fund.

Determination:

Having considered the evidence adduced, the Tribunal makes a finding under the Unfair Dismissals Acts, 1977 to 2007, that the claimant was constructively dismissed. In the circumstances of this case, the Tribunal deems it just and equitable to award the claimant the sum of €16,000.00 (sixteen thousand euro) as compensation under the said legislation. The practices and procedures adopted by the respondent in dealing with the claimant’s grievance could have been better andcommunication had broken down although the Tribunal felt that there was contribution on the partof the claimant.

Sealed with the Seal of the

Employment Appeals Tribunal

This ________________________

(Sgd.) ________________________
(CHAIRMAN)