

## **EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:  
Employee

CASE NO.  
UD2098/2009  
PW56/2009

against the recommendation of the Rights Commissioner in the case of

Employer

under

### **UNFAIR DISMISSALS ACTS, 1977 TO 2007 PAYMENT OF WAGES ACT, 1991**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey

Members: Mr. D. Winston  
Mr. Al. Butler

heard this claim at Dublin on 16<sup>th</sup> November 2009

Representation:

Claimant: In person

Respondent: Mr. Kevin Langford of Arthur Cox Solicitors, Earlsfort Terrace, Dublin 2

The determination of the Tribunal was as follows:

This case came before the Tribunal as an appeal by the employee of the recommendations of the Rights Commissioner reference numbers r-074780-ud-09/MMG and r-067737-pw-08-DI.

The claimant stated that he was constructively dismissed. The respondent said that the claimant resigned voluntarily. As the fact of dismissal is in dispute the onus is on the claimant to establish that he was dismissed.

The respondent stated that in relation to the claim under the Payment of Wages Act, 1919 they were not served notice of the appeal as required by Section 7 (2) (b) of the Act. The claimant did not counter this statement.

## **Claimant's Case**

The claimant gave evidence. He started work with the respondent with great expectations. It is an international company and he expected to develop a career there. As a senior accountant he thought he had good prospects and he was happy.

He wrote his letter of resignation using a template that he downloaded. He wanted to leave as quietly as possible. However the respondent contacted his new employer in an attempt to get him fired.

The trouble started when there was a training course for 5 or 6 of the accounting staff led by an English employee. At the training course he asked a question and his colleague started making noises at him. The others all laughed at him. He pretended not to notice but he did not like being targeted in this way. At a break he asked his colleague to stop but she said that she did not know what he was talking about.

He complained to his manager. He was called to a meeting but when he arrived his colleague was already there talking to the manager. The manager kept no notes of the meeting and no investigation was made. The manager just told him 'everything is fine, just go and apologise to her'. He believed the manager told everyone else in the office about the incident and as a result there were hostile feelings towards him. His colleague was more popular than he.

The next incident was when another manager asked a second colleague to work with him on a particular piece of work. The colleague refused to work with him. They were supposed to work as a team. However he was humiliated when the company allowed the second colleague to refuse to work with him. No action was taken and he had to work on the assignment alone. If he had behaved in that manner he would have been in trouble.

Then there was an occasion when the tax advisors asked for a legal opinion before giving advice. He contacted the legal department and was told to wait a few days. When no response was forthcoming he sought the legal advice. His manager called him to a meeting and he was blamed without being given a chance to tell his side of the story.

The secretarial department dealt with compliance matters. They would ring him for help and when he told them 'it's not my job' they contacted his manager to try to force him to help with their job. As a result he often had to work late.

He passed his accountancy exams and at that stage he felt he had suffered enough, the previous 20 months had been difficult. He found another job that paid more. He gave notice on 1<sup>st</sup> July 08. His last day was 31<sup>st</sup> July 08. He started in his new job on 8<sup>th</sup> August 08. He has to have a job. He is supporting his family. He could not leave without alternative employment.

## **Respondent's Case**

The respondent did not give evidence. The claimant's contract of employment contained a competition clause. His new employer is a direct competitor contrary to his contract. It is company policy to enforce the competition clause. The clause was not enforceable before the courts

## **Determination**

The Tribunal carefully considered the claimant's evidence. The claimant was unhappy in his employment. He acted reasonably in only resigning when he had secured alternative employment. Because he commenced his new employment very soon after his old employment terminated, he suffered no loss attributable to the termination of his employment. Therefore the Tribunal cannot make him any award.

The Tribunal finds that termination of the claimant's employment was not by reason of unfair dismissal. The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

The claim under the Payment of Wages Act, 1991 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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