

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO.
UD1606/2009
WT677/2009

against

EMPLOYER - respondent

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. C. Corcoran B.L.

Members: Mr. A. O'Mara
Mr. G. Whyte

heard these claims in Dublin on 15 July 2010

Representation:

Claimant:

In person

Respondent :

XXXXXXXXXX

The determination of the Tribunal was as follows:-

A claim was submitted through a firm of solicitors alleging that the respondent had breached the Organisation of Working Time Act, 1997, in that minimum rest and working time provisions were breached as were terms dealing with public holidays and record-keeping.

It was also alleged that, due to the respondent's oppressive conduct towards him, the claimant accepted voluntary redundancy around the time that he had intended to walk out. The claimant was allegedly the victim of bullying and harassment and was under evaluation by his g.p. for the psychological effects it was having on him. He could not make an informed decision because of the stress he was under and felt he had to accept voluntary redundancy to get himself out of a bad situation. Had he not accepted the redundancy he would have had to leave anyway. He claimed constructive dismissal in the circumstances.

In its defence the respondent denied that the claimant had been dismissed constructively or otherwise but stated that the claimant had resigned on voluntary severance which was in full and final settlement of all outstanding liabilities in respect of his employment with the respondent.

It was submitted that the claim was statute-barred in any event on the grounds that it was not made within six months and, indeed, only within a week of the twelve-month limit under the legislation. It was contended that there were no exceptional circumstances justifying an extension of the six-month period within which to bring the claim for unfair dismissal.

The claim under the Organisation of Working Time Act, 1997, was denied. It was noted that no details of the alleged breach of terms in relation to public holidays and record-keeping were contained in the Form T1A.

The respondent denied that it had bullied or harassed the claimant.

At the hearing, the chairman of the Tribunal division said that the first issue to be decided was that of the time limits given that the claim form (which stated that the employment had ended on 9 July 2008) had been stamped by the Tribunal on 1 July 2009. The chairman stated that the Tribunal would only hear evidence about any bullying allegation if the Tribunal decided to extend the required time for receipt of the claim form beyond six months to twelve months due to the Tribunal finding that exceptional; circumstances had prevented the lodging of the claim form within six months of the termination of the employment.

The claimant was asked to give testimony first as to extenuating circumstances.

When the claimant took the oath and began to speak, the respondent's representative stated that the claimant was trying to read from written material. The chairman then said that oral evidence was wanted but that, now and again, the claimant could refer to a document. The claimant was asked to tell his story.

The claimant's partner now asked if she could speak but was told that she could give evidence later (if the claimant told the Tribunal that he wished to call her as a witness).

Asked if he had been ill, the claimant replied that it was really unfair for him to sit there without a representative and that he had a written speech which he would be grateful if he could read.

Medical reports on the claimant from a general practitioner (CM) dated 13 April 2009 and 25 June 2010 were furnished. They were read by the Tribunal. The respondent's representative noted this but did not specifically object for any reason such as the fact that CM was not present to give evidence or be cross-examined.

The claimant, whose claim form stated that he had worked for the respondent from 16 July 2001 to 9 July 2008, told the Tribunal that he had been a level crossing operator who had allowed trains to pass through based on a signal that he would receive from a signal man. The claimant did relief

work on crossings on the Maynooth line. He would do about two hundred and fifty openings per day. He would be based on a gate as per a manager's orders.

Asked how his employment had ended, the claimant replied that he had made a formal complaint against someone who had physically assaulted him in the workplace. The claimant was threatened with his wages being stopped. His wages were not stopped but his expenses were stopped. The claimant was to be at the respondent's disposal "24/7". For two years he had got €88.90 per week in expenses but, when that incident happened, his expenses were stopped.

Asked if he had been told that he was being let go, the claimant said no.

Asked if he had signed an agreement, the claimant replied that he had left a long time after this incident but that since the incident he had been victimised. The trade union refused to bring his expenses-related claim on further. They went through a monitoring committee. He was "reinstated" with €7.45 per day.

Asked if he had sought advice, the claimant said that he had done so from the trade union but that the union had only brought it to the monitoring committee "which was an unfair system". He asked his trade union representative to bring his case further but the representative "basically refused".

The claimant attended a doctor since the first incident. Since 2004 he had been sick various times. He was now working about eight hours per week for another employer. He was still on medication for depression.

The claimant told the Tribunal that he had asked his trade union representative to bring a case but the representative had refused to do so. The claimant did not know about the six-month time limit. He enquired to a citizens information office and he had full details of that enquiry in his papers. Though he enquired he got no answers.

Questioned by the Tribunal, the claimant said that he had done twelve-hour shifts on the Maynooth line but that the rosters had subsequently been changed to eight hours. Queried as to his mention of operating the level crossing two hundred and fifty times in a day, the claimant replied that there had been a hundred trains per day.

Asked about getting a refusal from the union, the claimant replied that his representative had let management suit its own agenda, that he (the claimant) had proof and that he was accusing his representative of that. The claimant said that he had made a formal complaint, that he had plenty of letters and that he had often gone through a procedure but had got no support.

When it was put to the claimant that he had signed a voluntary redundancy he replied that he had felt that he had no choice but to sign. He had the paperwork for about a week and got his redundancy money.

The claimant was asked why, when he had had six months to apply to the Tribunal, he had taken a year. He replied that he had not been fully aware of the time limit, that he had not been in the right state of mind and that he was "basically in fear of my life". He alleged that the respondent was "trying to sack me at every opportunity".

Asked if there was any medical report following July 2008, the claimant said no.

Asked when the voluntary option had been put to him, the claimant replied that he had had no option but to leave, that he had decided to take voluntary redundancy and that he had even been “in fear of my life”. Management had refused to deal with what the claimant had brought to them. He had no choice but to accept voluntary redundancy. He knew that it was called voluntary.

When the claimant was asked if the respondent had forced him to take voluntary severance, the Tribunal chairman intervened saying that that would be part of the claimant’s case if his claim form was found to have been lodged in time.

Under cross-examination the claimant was asked if he would take a job if the respondent offered one. The chairman told the respondent’s representative to just deal with the six-month point. It was put to the claimant that his general practitioner’s report (for the period of time from 2003 to 2008) was from early 2009. He replied that his file had been in the medical centre from 2004.

Asked if he had told his doctor that he had been in fear of his life, the claimant replied that somebody had been killed and that, if it was not in the reports, he had brought up to his doctor about people punched in the head and hit with bottles over the head and having death threats. It was then put to the claimant that that was not in the reports.

The claimant stated that he had not been happy with how the respondent had dealt with him. He had gone to the citizens information office. He was there within six months. They told him that he needed to hurry up and sent him to get free legal aid to fill in forms for him. He went for free legal aid but it took about a month to do the means test.

When the claimant said that the matter of voluntary redundancy had been brought up with him it was put to him at the Tribunal that he had signed to accept thirty-two thousand euro. He replied that he had said that he was tired of all this and had taken redundancy.

When it was put to the claimant that he had got advice from a solicitor he replied that he had just dropped into an office and that a phonecall had been made on his behalf to the lady (LA) who was dealing with his redundancy but that LA had said that no-one other than the claimant would be spoken to about the claimant.

It was put to the claimant that he had been well enough to take legal advice about the voluntary package and well enough to take legal advice within six months. He replied that he had gone to the citizens information office within six months and that the time limit could be extended to one year. Rejecting the suggestion that he might have been well enough to get legal advice, he said that he “did not feel right to do anything” and that he had probably gone to the firm of solicitors seven or eight months after looking into getting free legal aid.

The claimant was now asked if he wanted to call his partner to testify. Declining this offer, he urged the Tribunal to read the documentation that he had provided. He stated his frustration and said that this (the documentation) “would have been so self-explanatory”.

Determination:

Having listened to both sides as to the claimant's claims being made beyond six months from termination but within a year, the Tribunal is of the view that the claimant has not discharged the onus for exceptional circumstances to let the Tribunal extend beyond six months. Also, it was so late in the year. The same finding applies with respect to extending the six-month time limit for the claim under the Organisation of Working Time Act, 1997.

Accordingly, the claims lodged under the Unfair Dismissals Acts, 1977 to 2007, and under the Organisation of Working Time Act, 1997, both fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)