

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO.
UD799/2009
MN826/2009

against

EMPLOYER - respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. D. Hegarty
Mr. D. McEvoy

heard these claims in Ballincollig on 13 April 2010 and in Cork on 22-23 June 2010

Representation:

Claimant:

Mr. David Gaffney, Coakley Moloney, Solicitors, 49 South
Mall, Cork

Respondent:

Mr. Kieran Hughes BL instructed by
XXXXXXX

The determination of the Tribunal was as follows:-

The claim

The claimant (according to the claim form, an auxiliary postal sorter who worked for the respondent from October 2004 to 13 October 2008) was allegedly subjected to ongoing bullying and harassment by his team leader (hereafter referred to as TL). The claimant notified the human resources department of the respondent who subsequently endeavoured to mediate between the parties. However, this proved to be unsuccessful as TL refused to make any apologies whatsoever for his behaviour. The claimant then sought that matters be addressed in a formal fashion but, shortly thereafter, he himself was subjected to allegations of a disciplinary nature and which allegedly amounted to victimisation. The disciplinary procedure adopted by the respondent was allegedly flawed and prejudiced. It was allegedly obvious, from correspondence that ensued between the parties, that the respondent had already pre-judged the outcome of the disciplinary process. The claimant on numerous occasions requested that the allegations of bullying and harassment against TL be investigated on a formal basis but the respondent refused. It was alleged that the claimant had no option but to consider himself constructively dismissed after a long period of absence through illness which was directly related to the manner in which he was treated during the course of his employment.

The defence

The respondent alleged: that the claimant had failed to co-operate with the respondent in relation to the alleged bullying and harassment; that the claimant had failed to make any proper complaint or provide sufficient detail into the alleged bullying and harassment; that the claimant had been disciplined in accordance with the normal and agreed disciplinary code of practice; and that the claimant had acted unfairly in refusing to come back to work.

Determination:

It was established at the Tribunal that the claimant had applied for and got another job, in circumstances where he was on sick leave from the respondent and had not indicated his return to the respondent, before formally resigning from the respondent. At that time there had been no change in the circumstances of the claimant's bullying and harassment complaint to the respondent. The respondent's chief medical officer had said that the claimant was fit to engage with the respondent. The claimant put fixed conditions to the respondent (such as a 37.5 hour week) which the respondent could not meet. As a response the claimant resigned.

It was left open to the Tribunal to judge whether it was the case that, because of bullying, the claimant had got sick and had therefore got a new job. The Tribunal considers this chain of causation too remote and finds that, while the Tribunal might question the respondent's attitude to the investigation of the bullying and harassment claim, the claimant did not discharge the onus of proof that was upon him to establish a case for constructive dismissal.

The Tribunal noted that the claimant applied for and obtained alternative employment prior to the date of termination. The Tribunal also noted that, during this period, the claimant was on sick leave certified unfit to work.

The Tribunal unanimously finds that the claimant did not make out a case that he had been

-constructively dismissed given that the claimant bears the burden of proof in a constructive dismissal claim. The claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

The claim lodged under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, is dismissed. It was not established that the respondent was in breach of the said legislation.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____
(CHAIRMAN)