

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.  
UD1770/2009

EMPLOYEE *-appellant*

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER *-respondent*

under

### UNFAIR DISSMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. C. Corcoran

Members: Mr. L. Tobin  
Mr. G. Whyte

heard this appeal at Dublin on 19<sup>th</sup> October 2010

#### **Representation:**

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Appellant: Ms Barbara Mebtouche, Triana, Independent Advice & Information  
Bureau, 13 Store Street, Dublin 1

Respondent: Ms Mairead Crosby, IBEC, Confederation House, 84/86 Lower Baggot  
Street, Dublin 2

**This case came before the Tribunal by way of an employee appeal against the recommendation of a Rights Commissioner r-069843-ud-08/MMG.**

The claim under the Unfair Dismissals Acts, 1977 to 2007 was one of constructive dismissal, accordingly it fell to the claimant to make his case.

#### **Claimant's Case**

The claimant worked for the respondent, a cleaning agency, from the 8<sup>th</sup> of August 2006. The claimant's working life became difficult when a new supervisor commenced employment with the respondent. The claimant, as well as a few other employees made a complaint against the supervisor in May 2008. The employees appointed a representative to bring the complaint to the respondent management as their English was not good enough. The respondent did not accept the representative so the complaint did not proceed. The respondent replied in writing requesting further information about the complaint and wrote again twice noting they had not yet received a reply from the claimant.

The claimant saw the final two pages of the contract of employment and signed them, but did not receive the full version and did not receive a copy translated to Polish. As a result the claimant was not aware of the grievance and disciplinary procedures in place.

The claimant did not complete a job on time and was requested to attend a meeting on the 15<sup>th</sup> of August to discuss his performance. The claimant was not assigned any work between the 1<sup>st</sup> of August and the proposed date of the meeting; the 15<sup>th</sup> of August. The proposed date of the meeting was changed so the claimant did not attend.

The claimant sent a letter of resignation outlining all his issues dated the 9<sup>th</sup> of August. The claimant's main grievance was that he was not assigned any work and could no longer afford to remain with the respondent. The respondent replied on the 12<sup>th</sup> of August declining to accept the claimant's resignation and suggested a meeting; the grievance procedure was included with the letter. The claimant requested a representative or an interpreter, which was declined by the respondent. The claimant proceeded and met with the respondent who informed him that all the issues would be fully investigated. On the 3<sup>rd</sup> of September the claimant received a letter asking him again to outline his issues in detail.

The claimant was normally informed by text where and when he should work. The claimant sent texts asking where he should be working but on each occasion was informed that there was no work available for him. The claimant was both a general cleaner and a window cleaner depending where the work was available. The claimant had no preference which type of work he carried out. During the period the claimant was not working there was no offer of any type of work made to him.

A number of colleagues of the claimant gave evidence that the supervisor would often withhold work as a punishment. One of the claimant's colleagues gave evidence that he did not receive a contract of employment; he was asked on the street to sign a loose page, which he identified as the last page of the contract.

### **Respondent's Case**

The respondent, a cleaning agency, issued contracts to all the staff. On receipt of the letter of complaint in May the respondent was very concerned so replied asking for a detailed letter of complaint. The respondent was not aware that the member of staff was acting as a representative for all the staff that made the complaint.

On receipt of the claimant's resignation the respondent wrote to him, as they wanted to investigate and resolve the claimant's issues. The claimant did not mention the fact that a lack of work led to his resignation. The supervisor informed the respondent that the claimant only did window cleaning work not general operative work; there was general operative work available for the claimant. The respondent was not given a chance to resolve the claimant's issues. The respondent did not carry out an investigation on foot of the claimant's complaint, as he did not respond when he was asked for more information.

### **Determination**

The Tribunal find that the claimant did not meet the burden of proof for Constructive Dismissal, accordingly the Tribunal upholds the recommendation **r-069843-ud-08/MMG** of the Rights Commissioner.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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