

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE –*claimant*

UD726/2009

Against

EMPLOYER –*respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C. Corcoran B.L.

Members: Mr W. Power
Mr. P. Woods

heard this claim at Dublin on 29th March 2010 and 19th July 2010 and 20th July 2010
and 29 November 2010 and 30 November 2010

Representation:

Claimant: In Person

Respondent: Mr. David Farrell, IR/HR Executive, IBEC, Confederation
House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

This is a case of Constructive Dismissal

Claimant's Case:

The claimant outlined to the Tribunal that he resigned his position with the respondent with effect from 1 October 2008 as a result of victimisation and bullying. The resignation was forced on him. He made numerous informal complaints and used the bullying and harassment policy. He attended his doctor due to stress and he suffered from anxiety. A number of incidents occurred with his direct manager CK. He complied with the grievance procedure. He was offered a position as senior operations after he instigated a complaint. The respondent informed him that it had insufficient evidence of bullying. The respondent failed to adhere to its policies. He felt isolated, demoralised and demeaned on a daily basis.

He outlined specific incidents, which occurred as follows:- On 10 April 2007 he was employed as an airfreight operator. He became aware that his manager CK did not get involved in his work. In

October 2007 a shipment failed, he was blamed and CK inferred that he was involved. He reported this to HR. HR informed him that he did not do anything wrong. The next day the senior manager asked CK for an account of the events. CK sent the claimant an email for an update on the shipment. Some days later he was asked to attend a meeting- this was a complaint meeting. He endeavoured to defend his colleague and he was very unhappy.

On 26 October he received an email from CK with an image of a naked man sitting on a lawn mower. He was quite shocked to receive this on his PC. He told CK that he did not want to receive anymore inappropriate emails. CK would have sent further emails.

On 21 November he was absent from work due to swelling on his face. He told CK that he had to leave the office. Twenty minutes later CK asked him to remain in the office. The next day he was ill in work and he told CK that he needed to go to the doctor. On 22 and 23 November he did not have a medical certificate. On Monday he was very ill and he visited the doctor again and he was given a medical certificate until 28 November. On 28 November he returned to work early. He gave his medical certificate to HR, which was valid for the next day, and he told CK that he had returned to work early.

On 5 December at 8.36am he received an email from his manager regarding another shipment. This shipment was missing in transit and the customer was led to believe that the claimant was responsible and he was blamed for the incident. He explained the matter to HR. HR informed him that a new position, senior to CK, would be filled by the marketing manager JOL. HR informed him that a number of people had complained about CK.

On 15 January 2008 his face was swollen. He told CK that he would like to leave the office. CK asked him if he had something in his mouth. Following this he went to HR and advised them of what CK said to him.

On 21 January 2008 he was requested to give an update on a shipment report by CK. He advised the customer that there was a delay and the customer was unhappy. This matter was escalated to JOL who told him to pay for special delivery no matter what the cost was. It was a common occurrence that CK provided no support. JOL was now the acting manager. When dealing with the respondent's parent overseas company in Israel, CK had omitted detail. CK was reprimanded and told to ensure it would not happen again.

On 23 January 2008 his colleague COC asked the claimant to help him. COC started cursing at the claimant. CK heard the conversation and she told the claimant to take on COC's work. The claimant told her that he would help but he was currently busy. The claimant told CK that he was unhappy with COC's behaviour. Five minutes later CK asked him to go to the boardroom. COC was in the boardroom and was very aggressive. The claimant asked CK could he leave the meeting and she ignored him. He left the meeting and completed COC's shipment. He informed HR at 6.15pm that he was being bullied.

He attended a staff meeting on 30 January 2008 and a new set of rules was introduced. The rule was that you now had to attend a back to work interview after being absent from work. CK introduced new procedures regarding staff being absent from the desk and permission had to be sought if an employee wished to leave their desk and they had to advise how long they would be absent from the desk.

The next morning 31 January 2008 his desk was torn apart, his telephone and PC were disconnected. His locker was rifled and he called IT to help him to sort it out. At that stage CK

put her desk beside his and they sat beside each other. His PC was reconnected. The MD called a third meeting and he reprimanded CK. The claimant's bullying complaint was not mentioned. HR attended and took minutes of the meeting.

On 12 February 2008, HR contacted him and told him that he should send a formal email. On 28 February 2008 he emailed SJ, a sales manager and he sent a copy to CK and he requested the profit instructions. SJ was under question as the business at the start of year was making a loss. Next day SJ told him to add a hidden five cents, it was a profit margin he wanted and CK told him to go ahead and this practice continued for eight months.

On 3 March 2008 he had been absent from the office. When he returned he discovered that a record related to SJ had not been cleared by customs and a shipment was released in error. He spent days trying to resolve the error. SJ became very abusive and emailed personnel with accusations against him. The claimant tried to resolve the matter and SJ told him that it was not his responsibility. Next day, 4 March 2008 CK told him that SJ had sent an email and CK told him not to read it, which the claimant declined. He reported this to JOL as he was disgusted and JOL told him that he would look after it. Eventually SJ apologised and that was the end of the matter.

On 9 May 2008 JOL brought the claimant and a colleague to the office. Two new people were joining the department. JOL told him that he was delighted with his performance and that of his colleague. It was agreed that one of the new employees would report to the claimant and the other new employee to his colleague. Two weeks elapsed and this never materialised.

On 9 May 2008 he received a call from their agent in the parent company in Israel and the call was very abrupt. This had happened numerous times. He emailed JOL and CK but he did not receive a response. Three days later he spoke to CK and she accused him of inciting abuse. He told her that he refuted this. CK insisted that he would deal with the shipment. He reported the matter to HR and JOL on 13 May 2008.

On 14 May 2008 he was called to a meeting in JOL's office. JOL told him that he had acted professionally and that he did nothing wrong. JOL told him he would respond to him privately and that was the end of the matter and he did not hear anything further in relation to this.

On 19 May 2008 he called CK and told her that he was unwell. CK told his colleague that he was recovering after a night out and he was annoyed at this.

On Monday 26 May 2008 he reported to work. He was covering airfreight duties for a colleague PD and he was very busy. He asked CK for assistance but she refused and told him that he must do sea freight. He told her that he would do it later. CK became very irate and started taking notes at her desk.

On 30 May 2008 he was called to a staff meeting. JOL was in attendance also. The claimant was reprimanded about his work on 26 May and he was stunned at this. He was accused of lack of ability and doing insufficient work. At the end of the meeting he asked for minutes. Both JOL and CK became irate and CK informed him that she taken personal notes and not minutes. He again asked for copy of the minutes and JOL told him that if he insisted on having the notes he had no choice but to abandon the meeting. He asked HR to assist in obtaining copies of the minutes and HR subsequently ignored these requests. He advised HR that he wanted to take a claim of bullying against CK regarding her investigation into his workload.

On 6 June 2008 he received an email from JOL out of the blue that HR had give him a copy of his email of 30 May which was confidential. JOL told him that he had refused to answer questions about his workload on 26 May. Twenty minutes later HR sent him an email and told him that they had discussed his bullying grievance with JOL. HR warned him that bullying was a very specific type of behaviour. JOL emailed the claimant and told him that he was not to reply to him by email but must meet him in person. Later that evening JOL looked at his PC screen and he told the claimant that he was not to send him emails and walked off.

On 7 June 2008 he went to the doctor, as he was ill and suffering from stress and anxiety. He was prescribed medication. On 9 June he called the office and CK told him not to return to work unless he was certified fit for work.

On 2 July 2008 JOL sent him an email regarding a quiet chat regarding his late attendance for work on 1 and 2 July. He told JOL that he would gladly meet him. He told JOL that he collected a medical certificate from his GP on 1 July. Due to stress he had overslept on 2 July. HR informed him that JOL had escalated the matter to HR as a disciplinary matter. HR informed him that JOL was now his manager and no longer CK. He asked for clarification on 8 July. He was informed that three late arrivals on 1, 2 and 3 July was a formal disciplinary issue. He received a first written warning for that and a related incident.

On 4 July 2008 when he returned to work after sick leave a number of air import files were on his desk. He asked CK if she knew anything about it and she told him that from now on he would do air imports and a new employee RM would do air exports. JOL also took up an operational position in his department. Both his managers isolated him and he was given no work to do.

On 9 July 2008 after submitting his medical certificate he was informed that the respondent had decided to withdraw his sick pay for his fifteen days absence in June for work related stress. He asked for clarification but HR refused to explain their decision to withdraw his pay.

On 10 July 2008 he submitted a formal written bullying grievance against CK to HR. He marked it confidential and do not copy. A number of his colleagues were witnesses. HR asked him for a copy of the document.

On 15 July 2008 he returned to work after holidays. He received an email from JOL who believed that he had breached warehouse security in that he had exited the warehouse door with his mobile phone. He was requested to attend a disciplinary meeting four hours later. He stated that the breach was a minor breach. He felt that this was as a result of instigating the grievance procedure. He received a first written warning.

On 16 July 2008 he went to IT regarding his emails. DQ in the IT department told him that CK accessed a number of his emails in the last few months. He showed the claimant a list of requests that CK had made. When the claimant left the IT department JOL saw him coming out and JOL wanted to know what he was doing in IT with DQ.

Next day 17 July 2008 he arrived in work and he met DQ who told him that he was not supposed to be seen talking to him. He told the claimant that after he had left him on 16 July that JOL had gone to DQ and discussed the claimant with him. The claimant asked JOL if he had told DQ that it would not be a good idea to be seen with the claimant and JOL replied no. He telephoned GD in HR and she was not available. The claimant was trembling and upset. He went to the bathroom and a few minutes later JOL started to question him and asked if it was his head or stomach. He

replied both. JOL told him to go to CK and he confirmed that he was leaving, as he was ill. He gave CK his mobile number. He asked CK to tell GD in HR that he had tried to telephone her. He realised CK was holding the telephone in her hand and it was later confirmed that the person at the end of the line was JOL. When he went home he received a call at 4.45pm from a courier to say that there was a letter from his employer. He asked the courier to return the next day. He received a call from GD in HR who informed him that he had refused correspondence from the respondent.

At 5.30pm he received a call from DQ stating that he had given a statement to HR. DQ told him that he was threatened with his job. DQ asked the claimant if he had received a letter from HR. DQ told the claimant that HR considered the conversation that he had with JOL to be hearsay. He did not receive the statement for a further three weeks. He asked DQ if he had caused problems for him and he replied that he had. DQ told him that only for his manager, he would be out the door.

On 18 July 2008 he telephoned CK. At 5pm he received a call from a courier to his home. A letter addressed to the claimant stated that the claimant was absent without leave. He told CK that his own GP was away at that time. On 21 July he visited his doctor and was certified with anxiety and stress. On 22 July he went to a solicitor who informed him he would write to the respondent on his behalf to confirm his medical condition.

On 31 July an email was sent from management to Israel concerning an air import account. In the email it stated that the claimant had resigned from the company and was replaced by RM. CK was absent and the email was sent to the entire department. The claimant was ill on 31 July and his resignation was announced. He did not discover this email had been sent until the 1 September 2008.

On 1 August 2008 he returned to work and his access card did not work. He met a colleague J who let him in. JOL told the claimant to report to HR, he asked the reason for this but he was not given an answer. He went to HR and JOL came in behind him as a witness for a meeting. JOL did not say anything at the meeting. HR expressed concern about the way he was treated. He was going to be suspended on a non-disciplinary basis on full pay pending the outcome of the bullying complaint. He had no witness and he asked HR to give him this in writing. He asked how long the suspension was for and he was told it was only for the duration of the bullying investigation. He asked if he would receive something in writing. A few minutes later two HR staff arrived in a corridor and escorted him out of the office. He had no opportunity to collect his belongings. He pleaded with HR to give him something in writing and they refused. He telephoned a colleague JB.

He asked him to come to a corner to witness what was going on. He wanted HR to confirm to him that JB was his witness and that he was suspended. HR informed JB that the meeting was with the claimant. He was told that he had to leave the premises. He pleaded for something in writing and he was informed to wait at the reception. After forty minutes someone from HR arrived with a

On 22 August 2008 he received a letter from the respondent regarding his bullying and that his grievance was not upheld. On 25 August 2008 he went to work and JOL approached him and threw an envelope on his desk. He opened the envelope and found details of the investigative meeting regarding his workload of 30 May. He was informed previously that there were no formal typed minutes of the meeting of 30 May. The claimant subsequently resigned with effect from 1st October 2008. He gave evidence pertaining to his financial loss to date.

In cross-examination the claimant stated that he found the email of the naked man on the lawnmower to be inappropriate but he did not feel personally targeted by it. He received other

non-business emails after that but he did not receive pornography again.

Regarding the problem with the shipment the claimant stated that the matter was becoming serious as the director became involved. The claimant felt that it was important for him to meet with GD from HR and he did. He told GD that he was suffering from stress a number of times. In late December 2007 he suffered work related stress as a very high profile customer made a serious complaint and he was sent to the customer's premises to deal with it even though he normally dealt with minor complaints.

On 23 January 2008, COC wanted to have CK delegate work, as he was busy with air imports. CK told COC he should delegate the work himself. COC delegated the work to the claimant who told COC that he was busy at that time but would help in a few minutes. COC cursed and used bad language and he slammed down the phone. CK was in the room and observed it and then sent the claimant an email that he should help COC. The claimant needed thirty minutes to finish imports. Both COC and the claimant were brought to the boardroom. COC lied to CK about his workload. It turned out that COC had no imports to do and only one export on had. CK was supportive of COC and she asked the claimant to undertake this workload.

It was put to the claimant that his email of complaint dated 23 January in relation to the details outlined did not state that he had been bullied by CK. The claimant stated that CK was complicit as she facilitated COC abusing him. The claimant had asked to leave the meeting but CK would not allow this. Due to his complaint both CK and COC were interviewed. The claimant asked for this to be dealt with as an official but informal complaint and no documents would be exchanged as outlined in the respondent's policy. HR told him that CK was not right to refuse him permission to leave the meeting and that CK had been reprimanded, but this was not the case.

Following a staff meeting in January 2008 CK positioned herself beside the claimant. The claimant believed that she moved herself beside the claimant following his complaint.

It was put to the claimant that the practice of adding 5 cents only lasted for a few weeks until JOL amended the rate. The claimant stated that the practice had continued for a number of months.

Emails in capital letters indicate shouting in the respondent's policy. An email such as this was received by the claimant from the respondent's agent in Israel. This happened on a number of occasions with a particular agent (TL) and the claimant emailed both CK and JOL requesting a new contact but he did not receive a response. Then he spoke to CK three days later and asked if she had the new contact. CK told him that he incited abuse and as a result of her saying that he then emailed GD in HR. It was put to the claimant that he had ongoing issues with the agents in Israel. The claimant replied that he did not have a problem with the agents in Israel; the only one he had a problem with was TL. TL had previously telephoned him and screamed at him for ten to fifteen minutes.

The claimant stated that RM was employed a few weeks before he was absent and within a few weeks he was undertaking the claimant's duties. JOL previously had his own office. He took up his old seat and sat beside RM who was familiarising himself with the role. When he returned to work he was suspended within five minutes. He was medically certified to return to work when he was placed on suspension.

Three or four days after he returned from suspension he sent HR an email to indicate he intended to raise a formal complaint regarding JOL's interference in the grievance procedure. He instigated it

on 29 July 2008 and submitted it in writing on 30 September 2008. This process was not concluded until eight months later

The claimant was cross-examined in relation to loss.

RM gave evidence of meeting with JOL. JOL knew that RM was unemployed, as he had just returned from Australia. RM met the director of respondent company and was interviewed for the position of Supply Chain Executive. He was offered this position around the end of May 2008. He worked on projects for a period of two months including that of a new transport system. From August 2008 he joined the Overseas Department. From the end of July and beginning of August he assisted in this department, as the claimant and another employee were absent. He had previously undertaken work with another company in logistics exports but he had never undertaken air import entry prior to this. He undertook a substantial amount of export work with the respondent. He was not aware if the claimant's air export duties were removed and given to him. He remained in the position until October 2009 when restructuring was implemented and he was offered the role of Overseas Manager. RM is now employed elsewhere.

In cross-examination he stated that he knew JOL prior to being employed by the company. The position he applied for was not advertised. He undertook project work for the customs department. JOL asked him to help out in the claimant's section at that time the claimant was absent on sick leave. RM stated that he had not undertaken air imports at desk level, as they were more complex.

JB gave evidence to the Tribunal that the claimant had no issue with management at first but JB later became aware that the claimant had made complaints. Management became more watchful of time keeping in relation to all staff.

JB could not recall management stating that the claimant was absent on 18 June 2008 due to a hangover. He saw the email dated 31 July 2008 that was sent stating that the claimant had resigned but JB knew this to be untrue as they were not informed that RM would be starting as a manager. This fact though was not clarified by management. JB did not know if this email was sent to external customers. He recalled that the claimant had telephoned him on 1 August 2008 to tell him that he had been suspended. JB explained that if both he and CK were absent the emails were redirected to the Overseas Department.

In cross-examination he stated that there was a "clash of personalities" between the claimant and CK. JB noticed tension between CK and the claimant but he did not observe bullying. The claimant relayed accounts to him of incidents of bullying between five and ten times.

JB was not present with the claimant at a meeting with HR but he did observe the claimant being escorted from the premises. JB could not say if HR had treated the claimant less favourably. All employees had run-ins but JB felt the claimant let them get to him. The claimant did not deal very well with being reprimanded.

In reply to questions from the Tribunal, JB stated that it was his opinion that there was a personality clash between the claimant and CK but that this issue had escalated.

Respondent's Case:

Representation for the respondent outlined that the claimant made a complaint on 30 May 2008 following an operational review meeting with two senior managers CK and JOL and on the same date that he was issued with a verbal warning regarding punctuality. The actual written formal complaint was submitted on 10 July 2008. The claimant resigned on 1 September 2008 after the conclusion of the investigation and he gave one month's notice.

Issues raised about other members of staff were often raised informally with HR and were investigated as appropriate and not ignored by the respondent. The claimant was disciplined once for lateness and secondly for a significant breach of security procedure. The ultimate investigation of bullying was not upheld.

Prior to leaving the claimant also raised a complaint regarding JOL on 30 September 2008. The complaint was taken seriously despite the fact that the claimant had resigned from his employment. The complaint was investigated and concluded in May 2009. The respondent rejected that the claimant was bullied or harassed by HR, CK or JOL and the respondent says the claimant contrived and fabricated a case and believed himself or his work to be immune to any criticism by any member of the management team.

The claimant was aggressive towards managers especially JOL. He became difficult to manage, disruptive and created negative and often hostile working environment in the Overseas Department and while his resignation was accepted the working relationship with the claimant had become untenable but that was through no fault of the respondent.

CK gave evidence that she began employment with the respondent company in May 2006 as Overseas Manager with responsibility for air and sea shipments. She currently holds the position of manager of the international trade department. CK and GD in HR interviewed the claimant and had a good feeling about his qualifications and experience. The claimant was subsequently offered the position of Foreign Forwarder (Air/Sea).

The claimant had a six-month probationary period from April to October 2007. He could handle air and sea but he had to familiarise himself with the PC system. There was a normal working relationship during these months. The claimant asked for documents to finalise his probation and he received a very good rating.

CK did not recall an incident regarding a failed shipment in October 2007.

She sent an email of a naked man to her department as a joke. She did not recall the claimant asking her to "stop" sending him emails and she did not recall him referring to it as pornographic.

When the claimant was absent in November 2007 she did not pressurise the claimant to return to work early. She did recall asking him to stay as long as he could on 21 November 2007 as they were under a lot of pressure that day but she asked this as a request.

On 5 December 2007 CK was not aware of any complaints made against her to HR. She was not subject to any performance review by HR because of complaints. CK was unaware that the claimant was prescribed medication in late December 2007 or certified as suffering from stress. CK stated that she would not expect difficulty with a shipment to cause stress to an employee as problems occur with shipments all the time.

In January 2008 a request was made from a customer for a shipment at the most economical air rate from the USA this was dated 17 December 2007. CK wrote a follow up to their agents and to confirm the flight. She would then delegate the shipment to the claimant. The customer looked for an update on 2 January 2008. The gap between the dates could mean that the freight was not ready or that there was no airline available. It had by then become urgent. Part of the claimant's role was to organise transport from Dublin Airport. The customer contacted the respondent again and the claimant outlined the situation that it was likely that there would be difficulty securing a haulier over the Christmas period. Special deliveries were out of the ordinary and cost a lot more. JOL approved a special delivery for this customer. CK could not understand how this incident could be taken as her bullying the claimant. The claimant had copied her on emails concerning this matter but he had not requested help and it was part of his role to address problems.

During January 2008 two irate emails were received from the agent in Israel concerning a rate code that was to be utilised for a particular customer. JOL forwarded the second email to CK and asked that any incorrect rates be adjusted. CK emailed the claimant and COC. The claimant replied stating that his orders were correct but that CK had made a mistake on one of them. She had obviously handled the shipment but did not use the code herself at the time, as she did not know of the code.

At the time of 23 January 2008 the employees in the department (both air freight and sea freight) sat together in an open plan office of thirty employees. CK had her back to them when she was sitting at her desk. On that date she could hear small disagreements and bickering between the claimant and COC. CK received an email from COC asking for assistance. She confirmed emailing the claimant and asking him to assist COC with imports as they were really under pressure. She had no reason at that time to believe COC was not under pressure. The claimant replied that once he had done his own imports he would assist.

CK did not know how many files each of them had at that point. The matter was not being resolved between them. CK checked the boardroom was free and she asked both of them to join her there and to bring their files. COC sat across from claimant and she sat at the end of the table. She asked them both to tell her what jobs they had on hand and they went through the files. They each had only one file, which required urgent attention that day. Both of them had exaggerated slightly and she asked them why they had claimed to be so busy.

COC and the claimant turned on each other and made accusations concerning being absent from their desk, taking cigarette breaks, using the internet and arriving late to work. COC was the louder of the two but the claimant was more defensive. CK attempted to calm matters down several times. She asked the claimant to remain at the meeting so they could try and resolve matters. This was not meant as a platform for COC to abuse the claimant. It was her hope they could all leave the boardroom being able to work together. CK was nervous at the meeting and she felt "out of her depth." The claimant told her he was not staying at the meeting. He took the export file that needed to be done from COC.

Her supervisor the Managing Director was not present that day so CK emailed HR after the meeting outlining what had occurred. Subsequently, she received the email from the claimant and she forwarded this to GD in HR and stated that she needed help dealing with it.

CK stated that she did not bully the claimant. It was the first time there were such problems in the department. At a subsequent meeting on 24 January 2008, GD in HR took statements from the

claimant, COC and CK. The outcome was that CK did not have control over the team and that she needed to get “tough” with the team and that she should sit with them from thereon in.

At a meeting on 30 January 2008, CK made the clocking in times clear to employees. Staff were entitled to a fifteen-minute break and one hour for lunch. If any staff had to go to the warehouse for a shipment, they could be absent from their desks for twenty to twenty-five minutes and they were now requested to inform her if they were going to the warehouse. Some employees told her and other did not. The claimant did not inform her.

A new seating arrangement was introduced. This was done in the morning; the claimant was one and a half hours late on this day, when he reported for work the seating arrangements had been changed. The claimant’s desk was not torn apart. The MD asked to have a staff meeting to include the claimant to reiterate the respondent’s position on clocking in and out on time. SJ dealt with the Ice Broadband Account and he sent an email to employees that the claimant had resigned from his job. On 4 March 2008 CK brought the claimant to the boardroom, she instructed the claimant not to read the email. The claimant reported the matter to JOL. An email was to sent to SJ reprimanding him about this.

In February 2008 JOL was appointed. GD in HR discussed with CK that her management style was “too soft”.

She complimented the claimant on his work on 25 March and she did not receive an acknowledgement from him. An agent in Israel became upset in relation to an email that the claimant sent him. The claimant spoke to her about this. The claimant did not want to deal with the agent anymore. The claimant asked that this be elevated to the Manager in Israel. She tried to explain to the claimant that he would have to handle the shipment. She spoke to JOL about it. The claimant was not happy but she could not remove the claimant from that account. The claimant had not given contact details to the agent. The claimant went to JOL and complained about it. The claimant accused the witness of initiating the incident but this was not the case.

The claimant contacted the office on 19 May, as he was not feeling well. She wished him happy birthday, as it was his birthday the previous day. She had an amicable conversation with him. She was aware of most of her colleagues’ birthdays.

On 26 May 2008 she received an email from the claimant, which the claimant had received from an agent in Qatar. The claimant requested her to look after this account. If staff were busy she needed to know what work they had. She asked the claimant what shipments he had and he gave her the names of eight customers. She discovered the claimant had only two shipments to work on that day plus the shipments she asked him to do. She spoke to JOL about this and he went to IT to obtain reports of accounts. The claimant was issued with a verbal warning on 27 May 2008 and he was invited to a disciplinary investigation. A staff meeting took place on May 30, present were the claimant, the witness and JOL who asked the claimant to stay behind. JOL wanted to discuss the claimant’s workload with him. CK took notes at the meeting and the claimant wanted to know what notes she took. The claimant requested a copy of the notes, they could not continue and the meeting concluded. At the meeting she did not think that they had a copy of the transactions to give to the claimant at that time. The claimant objected to the use of some of the transactions on the list. A considerable amount of work was done through email. The claimant was not busy on the 26 May.

In or around the 7 or 9 June 2008 the claimant telephoned in the morning and said he may come in

to work on Monday. The claimant was absent on a medical certificate. She told him that he had to have a fitness to return to work certificate from his doctor, and that was company policy. While the claimant was out RM undertook the claimant's work. RM had previous experience in Air Exports.

The claimant was absent between the 9 June and the 29 June and on 4 July he returned to work. When the claimant returned his files were on his colleagues desk. Management did not isolate the claimant. She did not see the email advising of the claimant's resignation which SJ sent until she returned from holidays. The claimant had not resigned. While she was on holidays her emails were sent to the overseas group. It was untrue that RM was now the airfreight manager. She was not aware that the claimant was under pressure and that he was forced to leave.

In cross-examination she stated that she is director of the overseas and customer department. Three staff had resigned since the claimant's resignation. RM resigned in May/June of 2010. The claimant was the key person in airfreight and the main contact for the customer. Regarding the email, which she sent, she did not think it inappropriate and now she realises it was inappropriate. She agreed that she asked the claimant to remain as long as he could in work on 21 November even though his face was swollen. It looked like the claimant had something stuffed in his mouth.

She probably received the email on 23 January 2008, which the claimant sent regarding his workload. She did not hear COC cursing at the claimant. She asked both the claimant and COC to the boardroom, as she wanted to calm the situation and both the claimant and COC agreed to talk about it. She found out what work both the claimant and COC had to do. She spoke to HR about this. She sent email to HR and explained that the meeting did not go very well. She did not feel that she was tough on the claimant. COC was busy and if the claimant managed his time better he would get more assignments completed. At the meeting on 23 January 2009 both the claimant and COC made serious accusations against each other.

JOL told the Tribunal that he was international trade manager at the time the claimant was employed. He managed air, sea travel and customers. He was responsible for a team of fourteen to fifteen staff. In June 2002 he established the freight department. There was no airfreight when he joined. A new MD was appointed and he became marketing manager. The position of international trade manager came up and he was successful on 7 February 2008.

On 17 December he dealt with a customer who had not received a delivery. The claimant sent one or two emails to this customer. JOL obtained a haulier and the customer received the delivery. He could not understand why other employees could not follow through on this. If an employee had a difficulty with a haulier they should go to a manager.

He did not attend a meeting on 21 January with the MD. He would have discussed with the MD that staff should start on time.

Air Freight charges fluctuated and the respondent bought and sold at mark up rates. SJ suggested a 5-cent rate and sales personnel made the decision on this. SJ was responsible for communication with customers and he sent an email that the claimant had resigned. JOL sent this to his boss and to HR. He asked SJ what the email was about and HR pursued this matter. SJ had to issue an apology. The first time he heard about the email the claimant received from CK was in the Tribunal and it had never previously been brought to his attention by the claimant.

The claimant was to train a new employee EMcC but that never materialised. He spoke to EMcC and a lot of time was been spent on emails as opposed to his job. JC did not report to JB.

The claimant and TL, the Israeli agent worked on different projects between 9 May to 14 May 2008 and a number of emails were exchanged between them. TL sent an email with capital letters. JOL sent the agent a ruling on the respondent's email policy. He contacted the MD of the respondent to ensure that the communication with the team was more professional. The claimant was upset as a result of the email and he felt that the Israeli agent was unfair. He had a number of conversations with the claimant about day-to-day tasks. He spoke to the MD in relation to the claimant.

On 30 May 2008 the witness CK and the claimant had a meeting. CK had been staying in work until 10pm. He asked CK why she stayed till late and she told him that she had an issue with the claimant; the claimant had told her he was too busy to do the job. He had looked at a report that IT had produced. He asked the claimant to remain on at the meeting. The claimant became very defensive and he explained to the claimant that CK had raised a concern and wanted to ensure that it was addressed. He had to ensure that CK was not in work until 10 at night. He reassured the claimant on a number of occasions. The claimant now felt this was a formal meeting, he asked for a copy of the notes that CK had taken. He wanted to know why the claimant was so busy and he wanted to establish what was taking up a lot of the claimant's time. He felt that the claimant's attitude at the meeting was very negative. He had to abandon the meeting and the claimant eventually received the notes of the meeting. He wanted to ensure that there was a fair division of work between departments. His department was not profitable at the time.

He became aware of a bullying and harassment allegation by the claimant on 30 May 2008. The claimant was absent from work between the 9 and 29 June. He returned to work on 30 June. The claimant came to work late and at that point it was difficult to communicate with the claimant. He told the claimant he needed to have a chat regarding his late arrivals. The claimant told him that he was suffering from insomnia and stress. He told the claimant that he should contact the respondent if he was late. Airfreight must be dealt with first thing in the morning. The claimant was issued with a written warning on 1 September regarding his attendance and lates and breach of security. The delay in issuing the written warning to the claimant was due to his absences but he was not one hundred per cent sure.

The claimant spent a considerable amount of time in the IT office and JOL told DQ in IT to inform him if procedures were not been adhered to. The claimant asked DQ if he had said something to DQ and POL told him he had not. The claimant told him he was a liar. He told the claimant to go to his office. The claimant told him he was sick of his f... shit. He wanted to address concerns raised and he felt very upset about this. He felt that the claimant was very aggressive. The claimant left the building and went home. The claimant was absent after that from 18 July until 1 August.

On 25 August 2008 the claimant accused him of throwing an envelope with the minutes of a meeting on the desk. He put the envelope on the desk and asked the claimant to give him a call. One and a half hours later he received email from the claimant. The claimant submitted his resignation and made an allegation on 29 September against the witness.

In cross-examination he stated that he asked IT for a report of employees workloads, as he wanted to establish their workload. At the meeting, which he attended with the claimant and CK he stated that CK took notes, he e mailed the notes to the claimant on 6 June the claimant was on sick leave. The claimant received the notes on 25 August 2008. The claimant would meet him instead of the MD and not the operational manager. He would have met the claimant in the presence of HR personnel. He did not suspend the claimant and he did not attend the suspension meeting.

When he took over the department he had a meeting with staff and informed them to arrive on time and that the dress code should be improved. He instructed CK to have a meeting with her team. Employees were not allowed to bring their mobile telephones to the warehouse. The claimant brought his mobile to the warehouse and this was in breach of security.

He had previously worked with RM and he suggested to the MD that he would be good for the respondent. He did not bring in RM as a replacement for the claimant. The MD interviewed RM for the position and it was not part of the witness's decision to employ RM. In June RM worked in the airfreight department and COC was absent on sick leave. He needed RM to look after exports. He was approached by two employees JB and MF that there was a communication problem in the department and that the atmosphere was quite bad.

In re-examination he stated that it was the nature of the job that the claimant had to work late on some occasions. A culture of employees' emailing each other existed and part of the meeting was to have employees communicate with each other. He was aware of the email sent regarding the claimant's resignation the week after it was sent. He had sent email to the HR Manager and the manager of the department that this was untrue as soon as he heard it.

GD the HR manager told the Tribunal that she had meetings with the claimant in 2007 and she did not recall the claimant making a complaint of bullying against CK. As far as she could recollect it was an informal chat and she did not take minutes. The first time she became aware of the email sent by CK was in the Tribunal. The claimant had sent her an email regarding his salary increase she had forgotten about it, the claimant had said he wanted an increase of €1,000 she agreed and the claimant confirmed that it should be €2,000, which he received.

She met with the claimant, on 23 January 2008. She also met with COC and CK that day. If the claimant wanted to make a formal complaint she would investigate it. CK met with COC and the claimant the next day. CK had instructed that both COC and the claimant needed to work together. Both the claimant and COC were aggressive at the meeting and the claimant was not as aggressive. She had given a commitment to the claimant that management would still investigate it. She told CK to discuss general issues and to manage them. CK had a meeting with them on 30 January, the witness was not present. She wanted them to raise their standards and for no further recurrence of the issues.

GD had numerous meetings with the claimant and her door was always open. No matter what she did for the claimant he was never happy. She was a trouble-shooter and a decision maker. The claimant wanted her to put a note on file regarding bullying and he did not want to pursue the formal route. The claimant was late reporting for work on numerous occasions in May and this resulted in a verbal warning. On 17 July she was on a training day and she received more calls from COC regarding an incident with the claimant. She was back in the office to investigate it.

SJ received a verbal warning for sending an email to colleagues whereby he announced that the claimant had resigned. This verbal warning was confirmed in writing.

The claimant made an allegation of bullying and harassment against CK on 10 July 2008. She asked the claimant if he wanted to put in a holding measure whereby he would report to JOL and not CK until the matter was investigated.

The claimant was asked to undertake work in the Limerick Office in August 2008. The claimant

had raised an issue that JOL had asked him to go to Limerick. On 18 August 2008 she met the claimant and he told her that she had never given him a copy of the minutes of the meeting in May. On 18 and 19 August the claimant was given a copy of all written statements.

The respondent attempted to address the issues raised by the claimant and could not do anymore for him. The claimant would not accept SJ's apology. There was no satisfying the claimant, the claimant felt that she was trying to manipulate the situation for the respondent. On 1 September the claimant submitted his resignation and the claimant was paid to stay at home. The claimant made complaints against JOL and CK. CK is now working in another Department and is doing well. Since the claimant left there have been no issues. There was a lack of communication in the department that the claimant worked in.

In cross-examination she agreed that the complaints that he made in January to May 2008 were against COC. CK wanted to manage the office issue in general. Sick pay was granted at the discretion of the respondent. She did not receive any medical certificates for the claimant until he returned to work. The reason that she sent him a letter to inform him he was suspended was that she wanted to pay him to remain at home.

RC told the Tribunal that he is sales director and part of the senior management team. He was considered the next in line to the MD. He received the claimant's case file from GD and JOL. He met the claimant and went through thirty-five points. He investigated the bullying claim against CK. He listened to what JOL had to say and he came to the conclusion that there was no substantive evidence of bullying against CK. Since the claimant left, the department had doubled its productivity and won an award for best employee.

Determination

- The Tribunal heard extensive evidence in this case. The claimant made an allegation against CK for bullying and harassment. This was investigated thoroughly by the company and no evidence of bullying was found. This decision was upheld on appeal, which was heard by RC, a senior director in the respondent company.
- Allegations were made against JOL and that he had interfered in the bullying process and that he had it in for the claimant and that he did not like the claimant. The claimant was suspended and he left the company. JOL put structures in place regarding timekeeping. Employees could start at 8.30 am and finish at 5.30pm or start at 9.00am and finish at 6.00pm. He granted the claimant his request for the 9am to 6pm shift. If the claimant was late and worked later than 5.30pm that did not make up the time as given the nature of the work it was imperative that employees report for work on time.
- SJ was reprimanded by the respondent for sending the email to employees. SJ apologised to the claimant for the emails he sent to him regarding work on 3 March 2008 and 4 March 2008.
- The email which the claimant received from CK and other incidents as alleged were not enough to warrant the claimant's departure from the company.
- There was a high degree of tension amongst staff in the area where the claimant worked in an open plan area. JOL moved from his own office to this open plan area in an endeavour to resolve the matter and desks were re-arranged

- The HR manager outlined that she had spent a considerable amount of time and effort in trying to resolve the claimant's problems. In her direct evidence she stated that the claimant always complained.
- The Tribunal finds that the respondent genuinely endeavoured to find a resolution to the problems that the claimant encountered and that the claimant did not prove his case of constructive dismissal under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)