

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE – *claimant*

CASE NO.  
UD2097/2009  
MN1957/2009  
WT890/2009

against

EMPLOYER – *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N O'Carroll-Kelly BL

Members: Mr D Peakin  
Mr J Flannery

heard this claim at Dublin on 25th January 2011 and 19th April 2011

Representation:  
\_\_\_\_\_

Claimant(s): In person

Respondent(s): Ms Cathy Smith BL, instructed by:  
Mr Michael Heneghan  
The Chief State Solicitor's Office  
Osmond House  
Little Ship Street  
Dublin 8

The determination of the Tribunal was as follows:

**Respondent's Case:**

The first witness for the respondent gave evidence that she became the Department's Personnel Officer in September 2008. She previously worked in the Personnel Unit from June 2003 until July 2005 and dealt with the claimant's case during that period. The claimant's employment with the Department commenced in 1973. In 1981 she was assigned to the Labour Inspectorate section. In 1999 she was upgraded with the other Labour Inspectors to executive officer level. She continued in the Labour Inspectorate until May 2003 when she was assigned to the Employment Appeals

Tribunal due to a backlog there. Two members of staff from the Labour Inspectorate were assigned to the Tribunal.

The claimant invoked the grievance procedure concerning the assignment, and a mediation process was entered into in July 2003. The agreement reached was that the claimant would move to the Tribunal, but that she would be considered for return to the Labour Inspectorate when a proposed allowance materialised and that a training and development plan should be devised for her. The claimant took up the post in the Tribunal but was unhappy there. A meeting was held on November 26<sup>th</sup> 2003 between the claimant and Principal Officer of the section, in the company of two members of local management. The Principal Officer's conclusion was that the claimant's assignment to the Tribunal had not worked out and he recommended that she be transferred to another section.

The matter was referred back to the Mediator and the Mediator recommended on August 10<sup>th</sup> 2004 that the claimant be returned to the Labour Inspectorate in the near future. The Personnel Officer wrote to the claimant on August 25<sup>th</sup> 2004 and stated that he intended to transfer her to the Labour Inspectorate subject to the claimant reconciling all outstanding absences with her line manager. The claimant had not been complying with the rules of the flexitime system by not always clocking in and out and by not reconciling absences. There were several days and nine full weeks when the claimant had no record of attendance.

The claimant failed to reconcile her absences despite written requests from her line manager and the Personnel Officer. The claimant refused to discuss the flexitime reconciliation at a meeting with the Personnel Officer on October 12<sup>th</sup> 2004. The claimant failed to attend two further meetings scheduled with the Personnel Officer on December 15<sup>th</sup> 2004 and January 24<sup>th</sup> 2005 citing illness. However, the claimant clocked in on December 15<sup>th</sup> 2004 at 7.36am and out at 8.10am and in at 13.03pm and out at 15.38pm.

The Personnel Officer wrote to the claimant in June 2005 initiating disciplinary procedures for failure to record her attendance on the flexitime system, failure to reconcile her flexitime attendance and persistent unauthorised absences from the office.

The Personnel Officer wrote to the claimant on October 13<sup>th</sup> 2005 stating that she would be transferred to the Labour Inspectorate subject to her submission of her annual leave records for 2004 and 2005, her written acceptance to comply with the standard attendance requirements applicable to the Labour Inspectorate and her written acceptance of the standard undertaking required of Labour Inspectors. The claimant was also issued with a formal verbal warning for failure to comply with attendance regulations. The witness stated that the Department removed the requirement for the claimant to reconcile her flexi attendance in order to move the situation on. The claimant was not being assigned work in the Tribunal, as her attendance could not be relied upon. The claimant did not comply with any of the criteria outlined.

The Department decided to effect the transfer and wrote to the claimant on June 14<sup>th</sup> 2007 stating that she would be transferred subject to her agreeing to comply with the standard attendance requirements for Labour Inspectors, complying with the standard undertaking required of Labour Inspectors and submitting her annual leave records from 2004 to date to the Personnel Unit. Non-compliance would be subject to disciplinary action in accordance with Circular 14/2006: Civil Service Disciplinary Code. The claimant was requested to attend a meeting with a representative of the Personnel Unit on June 19<sup>th</sup> 2007 to finalise the reassignment. The claimant attended the meeting.

The claimant was notified that she was being assigned to the National Employment Rights Authority (NERA), the Labour Inspectorate's successor, on Monday August 13<sup>th</sup> 2007. Thereassignment was subject to the conditions previously outlined non-compliance with which would lead to disciplinary action. The claimant did not report to NERA on the specified date and did not contact the Department. On that date the claimant was considered to have been transferred to NERA and was paid through that budget.

An officer of the Personnel Unit wrote to the claimant on August 28<sup>th</sup> 2007 and informed her that as she had not reported to NERA the matter would be dealt with under the Civil Service Disciplinary Code. On September 18<sup>th</sup> 2007 the Personnel Officer wrote to the claimant to instruct her to attend a formal disciplinary interview on Wednesday October 3<sup>rd</sup> 2007 in accordance with stage one of the Civil Service Disciplinary Code. A copy of the Disciplinary Code was enclosed. The letter stated that the purpose of the meeting was to discuss the claimant's failure to report to NERA, her unauthorised absence since then and to issue her with a verbal warning. The claimant failed to attend the meeting. During this time the claimant occasionally attended the Tribunal offices, sometimes out of hours.

The Personnel Officer wrote to the claimant on October 11<sup>th</sup> 2007 and issued her with a verbal warning in accordance with stage one of the Disciplinary Code for her failure to report to NERA. The claimant was instructed to report to NERA on Wednesday October 17<sup>th</sup> 2007. The reassignment was subject to the conditions previously outlined. Non-compliance would be subject to stage two of the Disciplinary Code. The claimant failed to attend as instructed on October 17<sup>th</sup> 2007. The claimant made no contact.

The Personnel Officer wrote to the claimant to instruct her to attend a formal disciplinary meeting on October 31<sup>st</sup> 2007, in accordance with stage two of the Disciplinary Code to discuss her failure to report to NERA on August 13<sup>th</sup> 2007, her unauthorised absence since then and to issue her with a written warning. The letter stated that the Disciplinary Code allowed for a number of actions up to and including dismissal notwithstanding non-compliance with the process by the officer concerned. The claimant failed to attend the meeting.

The claimant was issued with a written warning by letter of November 6<sup>th</sup> 2007, for her failure to report to NERA and her unauthorised absence since August 13<sup>th</sup> 2007. The claimant was instructed to report to NERA on Tuesday November 13<sup>th</sup> 2007. Failure to report would lead to a continuation of the disciplinary proceedings under stage three of the Disciplinary Code. The claimant failed to attend and did not make any contact.

The Personnel Officer wrote to the claimant on November 19<sup>th</sup> 2007 and instructed her to attend a formal disciplinary interview under stage three of the Disciplinary Code on Thursday November 29<sup>th</sup> 2007. The purpose of the meeting was to discuss the claimant's failure to report to NERA, her unauthorised absence since August 13<sup>th</sup> 2007 and to issue a final written warning in regard to this. The claimant failed to attend the meeting and did not make any contact.

The Personnel Officer wrote to the claimant on December 7<sup>th</sup> 2007 and issued her with a final instruction to report to NERA on Monday December 17<sup>th</sup> 2007. No further warnings would be issued. The claimant failed to attend.

There was no further action in relation to the case until the witness became Personnel Officer in September 2008 replacing the previous Personnel Officer who retired. She decided to give the

claimant one more opportunity to report to NERA on Monday October 20<sup>th</sup> 2008. This was communicated by letter of September 30<sup>th</sup> 2008. The claimant failed to attend.

The Personnel Officer wrote to the claimant on October 22<sup>nd</sup> 2008 and instructed her to attend a formal disciplinary meeting on Friday October 31<sup>st</sup> 2008 to discuss her failure to report to NERA, her unauthorised absence since August 13<sup>th</sup> 2007 and to issue her with a final written warning. The letter stated that the claimant would be removed from the payroll. The witness repeated stage three of the Disciplinary Code, as a final written warning had not been issued following her failure to attend the previous stage three disciplinary meeting. The claimant failed to attend the meeting.

The Personnel Officer wrote to the claimant on October 31<sup>st</sup> 2008 and issued her with a final written warning. She instructed the claimant to report to NERA on Monday November 10<sup>th</sup> 2008. The letter stated that failure to report would lead to further disciplinary action up to and including dismissal and immediate removal from the payroll. The claimant did not attend on Monday November 10<sup>th</sup> 2008 and was removed from the payroll.

The claimant's trade union official contacted the Department and arranged a meeting for November 21<sup>st</sup> 2008. The claimant was restored to the payroll pending this meeting. The claimant submitted a medical certificate for the period November 18<sup>th</sup> to December 5<sup>th</sup> 2008 which stated that she was unfit for work due to work related stress. The Personnel Officer wrote to the claimant on November 21<sup>st</sup> 2008 and informed her that there was no automatic right to paid sick leave and that she was being removed from the payroll with immediate effect. The claimant had not notified the Department of any illness during the disciplinary process prior to this medical certificate.

The Personnel Officer wrote to the claimant on January 14<sup>th</sup> 2009 regarding her continued failure to report for work at NERA. She instructed the claimant to attend a meeting on Wednesday January 21<sup>st</sup> 2009 in accordance with paragraph 35 under stage four of the Disciplinary Code. The claimant failed to attend the meeting and did not explain her absence.

The Personnel Officer wrote to the claimant on January 30<sup>th</sup> 2009 in accordance with paragraph 37 of the Disciplinary Code. The letter stated that the Personnel Officer intended to recommend to the Secretary General that the claimant be dismissed. In accordance with paragraph 38 the claimant was given until Monday February 16<sup>th</sup> 2009 to respond and to request a meeting if desired. The claimant did not respond in writing or request a meeting.

The Personnel Officer wrote to the claimant on February 25<sup>th</sup> 2009 and informed her that she intended to recommend to the Secretary General that she be dismissed. The claimant was informed that she could make representations to the Secretary General of the Department or seek a review of the procedures by the Civil Service Disciplinary Code Appeal Board. If the claimant did not reply by March 11<sup>th</sup> 2009 the Secretary General would make his decision.

On March 25<sup>th</sup> 2009, the Personnel Officer recommended to the Secretary General that the claimant be dismissed. She recommended that the claimant receive two weeks' notice as the dismissal was on the grounds of misconduct, which allows for a shorter period of notice. The Secretary General agreed with the recommendation on April 7<sup>th</sup> 2009. The Personnel Officer wrote to the claimant and informed her of the decision and issued her with two weeks' notice on April 7<sup>th</sup> 2009.

The Personnel Officer went on leave shortly afterwards and understood that the claimant came to the office and met with another officer. The claimant then sent a letter indicating that she wished to appeal the decision. However, there was no option to appeal the decision at that stage. The time to

appeal was as outlined in the letter of February 25<sup>th</sup> 2009 that she could either make representations to the Secretary General or to the Civil Service Disciplinary Code Appeal Board which she did not do. She informed the claimant of this by letter of April 27<sup>th</sup> 2009. The claimant made a request to see her personnel file which the Personnel Officer made arrangements for, but the claimant did not pursue. She received representations from the claimant's trade union official who took issue with the Disciplinary Code the dismissal was taken under. The Code was replaced in 2006 and the claimant was advised of that at the time.

During cross-examination the Personnel Officer stated that no notes were taken during the mediation consultations, as it was an informal process. On occasions the Mediator went between the parties in different rooms. She did not know why the claimant was selected to move to the Tribunal. The Assistant Secretary made the decision. The Tribunal required more staff and Labour Inspectors already have a good knowledge of the legislation used and could therefore "hit the ground running".

The Labour Inspectors' allowance which the claimant referred to had been under discussion for a long time and was not in place in 2003. The claimant was not at a disadvantage while in the Tribunal. The claimant was moved to the Tribunal in June 2003.

The Personnel Officer was aware of a complaint by the claimant in regard to her post being opened. She was not aware of the claimant having made other complaints. She was not aware of what documents were made available to the claimant's Principal Officer for the meeting of November 27<sup>th</sup> 2003. She was not aware of the Principal Officer producing any allegations against the claimant at the meeting. No allegations were referred to the Personnel Unit.

The Personnel Officer understood that the claimant's trade union officer contacted the then Personnel Officer concerning the claimant's unhappiness in the Tribunal and to reopen the mediation process. She was unable to find a note of any meeting between the claimant and the Secretary General. The claimant was dismissed for her failure to turn up for work with the Labour Inspectorate. The claimant never indicated that she wasn't going to show up or approached the Personnel Unit to explain why she wasn't attending.

The Personnel Officer disputed that the stipulation that the claimant reconcile her absences was a delaying tactic by the Department. Most employees reconcile their clocks promptly.

In response to the Tribunal the Personnel Officer explained that she believed that the Department delayed on stopping the claimant's pay in order to give her an opportunity to report to the Labour Inspectorate and only when it became clear that the claimant was not engaging with the Department, was she removed from the payroll.

A Higher Executive Officer from the Personnel Unit gave evidence on behalf of the Secretary General that he sanctioned the claimant's dismissal in April 2009.

During cross-examination the witness stated that she was not aware of two meetings between the claimant and the Secretary General in 2005 and 2006. The witness personally attended meetings with the claimant in October 2004 and June 2007. There were no notes of the June 2007 meeting. The witness understood that the meeting was not held under any specific policy. Her colleague asked the claimant to reconcile her absences. She did not recall the claimant being asked to sign the Labour Inspector's undertaking at the meeting, but it is a form every Inspector has to sign. She was not a disciplinary officer. There is no such role in the Department.

In response to the claimant asking why nothing happened between the Principal Officer recommending the claimant be transferred in November 2003 and April 2004, the Personnel Officer explained that a letter dated April 22<sup>nd</sup> 2004 from the then Personnel Officer informed the claimant that he had no option but to transfer her from the Tribunal as her unreliable attendance pattern meant other secretaries had to cover her sittings at short notice. He had contacted the claimant's trade union representative to establish if the claimant had any preferences in regard to the transfer, but despite reminders he had not received a substantive response. He therefore sought a meeting with the claimant on April 27<sup>th</sup> 2004.

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

The claimant gave evidence that she joined the Department in 1973. She was assigned to the Labour Inspectorate in 1981. In early 2000 nine Inspectors had a difficulty with local management. They met the Principal Officer individually. She was asked if she had signed a letter regarding local management which was sent to the Personnel Unit and the Secretary General. She was instructed by the Personnel Officer to sign a form of undertaking and would have to undergo 12 months' probation. Ultimately the staff members were successful in having the period of probation removed.

In 2001 there were promotions and the claimant, as a senior person, expected to be offered a promotion but she was not consulted. The claimant felt that she had been overlooked as she had raised issues relating to the Inspectorate.

She found her supervisor unsupportive. In 2002 the claimant applied for a computer course. The day before the course her supervisor told her that he didn't want her to attend, as he wanted all the staff to do the course together. She bumped into the Assistant Secretary and told him that she wasn't allowed to attend the course as they were so busy. He said it was a good course and she should attend. She went to her supervisor and told him that the Assistant Secretary said she should go on the course. Her supervisor spoke to the Assistant Secretary and the claimant went on the course. In September 2002 her supervisor excluded her from emails sent to other employees.

The claimant was very busy on a large case in early 2003. On March 10<sup>th</sup> 2003 the Assistant Secretary told her that he was transferring her to the Tribunal. She was shocked and upset that she was being moved when the new allowance had been agreed and she had just bought a new car. The claimant invoked the grievance process regarding the transfer. In May 2003 she sought a mediator to be brought in. The mediation session was held July 2003. The claimant had no problem moving as long as she was a labour inspector. She was moved to the Tribunal in May 2003.

The claimant had attempted to continue with her duties while the mediation process was ongoing, but her mouse was removed from her table and she could not access her email. Her supervisor said one of the consultants needed a mouse. Also in 2003 some of her personal items were moved to beside the door and documents she put on files were removed. Her trade union representative told her to give the Tribunal a go.

She was unhappy with the condition of one of the buildings where the hearings were held as it had open ceilings with asbestos overhead. She was not assigned a desk when she moved. She believed that because she invoked the grievance process she was not given a desk and her computer was blocked. She felt isolated. The Assistant Secretary had told her that she could travel as a secretary. It didn't suit the other staff and management in the section that she travel as they wanted to keep

the perk of the travel allowance to themselves. The claimant did get to travel but when she found out that she wasn't getting as much travel as another secretary she questioned it.

She had a meeting in November 2003 with the Principal Officer, Assistant Principal Officer and the Higher Executive Officer as she found her situation intolerable. Her emails were being deleted and her private space was being invaded. She was a big woman and lost a lot of weight. She could not always get a date for resuming hearings, as the Listing Officer was part-time. There was no training officer in the section. There was no tracking system for files in the office and so there was no way of knowing who had a file. In 2003 her health was deteriorating. She was stalked. Her mail was opened. The outcome of the meeting was that she be moved immediately. She only wanted to return to the Labour Inspectorate.

She was the only secretary scheduled to work over Christmas 2003. Other staff members were given a day off and the privilege day and she didn't receive this. In January she requested leave over which there was great commotion and her supervisor did not want her to go. She left her time sheet with the supervisor and took two weeks off. She did not see her leave sheet again. When she returned she found a letter on her desk from her trade union official which had been opened and her computer had what looked like chocolate on it. She went to her trade union official. There was correspondence with the Personnel Unit about the opened mail, but it was not discovered who opened the letter. She was unhappy with the lack of investigation into the matter.

She discovered in 2004 that other staff in the section were receiving overtime payments but the supervisor was not willing to sanction overtime for her. She was due to travel to Galway in April 2004 but when she looked at the roster again her name had been removed. She contacted her trade union to have the mediation process reactivated. It was agreed for July 2<sup>nd</sup> 2004.

She believed that the Personnel Unit and the Assistant Secretary did not wish for her to return to the Inspectorate. If there was an issue regarding outstanding time on her clock they could deduct it from her wages. She could not do her work as she was under so much stress.

The Mediator recommended in August 2004 that she return to the Inspectorate. At that stage she would not have minded if the Department had deducted her wages for the outstanding time. She did not reconcile her absences, as she believed it was a delaying tactic by the Personnel Unit. If she reconciled her clock there would be something else. She was not in the Tribunal at that point. She was wandering around the hearing rooms waiting to be transferred.

The Personnel Officer said if she didn't reconcile her clock there would be a disciplinary process. She had lost interest by then. She used to go to the National Gallery. She knew someone was following her. She visited Dail representatives about her situation and went to a solicitor. She wrote to the Assistant Secretary over the Personnel Unit on October 22<sup>nd</sup> 2004 to lodge a complaint of bullying and harassment, but this was not responded to. She would have preferred if they had developed a training programme to reintegrate her back into the Labour Inspectorate. She had not been on the clock as a Labour Inspector.

On January 24<sup>th</sup> 2005 she wrote to the Personnel Officer to complain that work had been withdrawn from her in early 2004 and she had been blocked out of her computer. She outlined other reasons why she was unhappy in the Tribunal. She stated that she could not attend the meeting scheduled for that day due to illness. She did not receive a response.

She received the letter dated October 13<sup>th</sup> 2005 from the Personnel Officer but she considered that

he was part of the problem as he was a friend of the supervisor in the Labour Inspectorate with whom she had difficulties. She wanted someone independent which was why she had sought a mediator. She did not reply to him, as she did not trust him. She did not respond to the letter of June 2<sup>nd</sup> 2005 as she had made it clear in her letter to the Personnel Officer in January 2005 and to the Assistant Secretary in October 2004 that she was very stressed at that stage.

She met with an officer of the Personnel Unit in June 2007, but again there was no training or development plan to reintegrate her back into the Inspectorate. She had appealed the verbal warning she had received. She was upset that the other inspectors were getting the new allowance in 2007 but she did not receive it even though she was an inspector.

She received a letter in July, which stated that she was being assigned to NERA on August 13<sup>th</sup> 2007 and that she had to sign a form of undertaking. She did not attend, as they had not organised a reintegration programme. She felt that she was being abandoned. She had not requested a reintegration course in writing. She had queried with the Personnel Officer what training she would receive and selected to do a HR management course in 2003 but this request was refused.

The claimant received a verbal warning on October 11<sup>th</sup> 2007. She did not attend the meetings as they were to be chaired by the Personnel Officer and as it was just a repetition of what had happened under the old disciplinary code. She had already appealed a verbal warning issued under the old code without satisfaction and this was just repeating the process. She did not appeal this warning, as she knew she wasn't going to get anywhere.

She did not attend NERA on October 17<sup>th</sup> 2007. She did not attend the meeting scheduled for October 31<sup>st</sup> 2007 as she had written to the Secretary General and an Assistant Secretary. She had lost confidence then and felt that if she went back to the Labour Inspectorate she could not produce the quality she had in the past.

She was requested to attend NERA on November 13<sup>th</sup> 2007 but she did not attend as she felt it was pointless at that stage. She did not attend the disciplinary meeting on November 29<sup>th</sup> 2007. She did not attend NERA on December 17<sup>th</sup> 2007. This series of disciplinary actions was taken under the 2006 code and her grievances began before that. Then there was nothing until September 2008. During that time she came and went from the Department to check if there was any post on her desk.

She received a letter from the new Personnel Officer in September 2008 issuing her with a final instruction to attend NERA on October 20<sup>th</sup> 2008. She did not attend. She received a further letter from the Personnel Officer on October 22<sup>nd</sup> 2008. She received a final written warning by letter of October 31<sup>st</sup> 2008. She was not referred to a doctor or medical officer. No regard was taken of her having written about stress. She was not receiving medical treatment at that time.

She did not attend NERA on November 10<sup>th</sup> 2008. She was taken off the payroll. She did not attend the meeting on January 21<sup>st</sup> 2009. She did not attend, as the new disciplinary code did not apply to her as she was being dealt with under the old code. She did not make representations to the Secretary General as she had already written to him previously. She did not respond to the letter, dated February 25<sup>th</sup> 2009, which recommended her dismissal, as the new disciplinary code did not apply to her. She went to several members of the Dail to discuss her case.

She then wrote to appeal the decision on April 21<sup>st</sup> 2009. She went to the Personnel Unit and met an officer there and he was of the opinion that she was in time to appeal.



During cross-examination the claimant accepted that a probation period always applied to promotions, but she considered that she was re-graded in 1999. She did not consider it to have been a promotion. She was on leave between May and July 2003 as she had accrued considerable time in lieu. She contended that she had been threatened with suspension if she didn't take it. She agreed to the Mediator's recommendation that she move to the Tribunal.

She contended that she was treated less favourably to other secretaries in regard to travel up to September 2003. She first sat on hearings in July. She agreed that from September 15<sup>th</sup> to December 2003 she had the second highest rate of mileage of the secretariat. This was after she highlighted the issue. Some secretaries did not have cars. The Tribunal did not sit for a couple of weeks in August. Her mileage was also among the highest from January to April 2004.

The Principal Officer recommended that she be transferred after the November 2003 meeting. She contended that the Personnel Unit had written to her trade union and not to her personally about her transfer. The letter of April 22<sup>nd</sup> 2004 was addressed to her but she did not respond as her case had been referred to the Mediator. It was another delaying tactic by the Personnel Unit, as they knew she wanted to return to the Labour Inspectorate.

The 2004 mediation resulted in the recommendation that she return to the Labour Inspectorate, but there was no training to reinstate her with the same local management. She was not aware that three members of local management had left by August 2007. Personnel could have deducted her wages for the time she was down and sent her back to the Inspectorate, but they wanted a new undertaking. She contended that she did not see the response from the Assistant Secretary to whom she had written to regarding her grievance about being bullied.

She did not engage with the new Personnel Officer from September 2008 as at the Minister's drinks in 2002 a third party had made a joke about her to the Personnel Officer and the Personnel Officer made a face. She did not make an appeal when offered, as she wanted to wait until the process was over and then appeal to the Department of Finance.

The claimant gave evidence of her loss.

### **Determination:**

The burden of proof lies with the respondent to show that the claimant's dismissal was fair.

Section 6 (1) of the Act states " ... the dismissal of the employee shall be deemed, for the purpose of this Act, to be an unfair dismissal unless, having regard to all the circumstances there were substantial grounds justifying the dismissal"

The claimant was transferred to the Tribunal Secretariat from the Labour Inspectorate. She was notified of that by letter of the 1<sup>st</sup> May 2003. The transfer was to take effect from the 12<sup>th</sup> May 2003. The purpose of the transfer was to facilitate the Tribunal with the backlog of cases. She queried her selection for transfer and invoked the grievance procedure. The matter went to mediation and a conciliated settlement was reached in July 2003. Following that the claimant took up her post in the EAT and was trained in. She continued to express her unhappiness with her new role. In mid 2004 the matter was referred back to mediation. A reconvened hearing took place on the 2<sup>nd</sup> July 2004. It was recommended that the claimant be transferred back to Labour Inspectorate in the near future. The personnel officer wrote to the claimant on the 25<sup>th</sup> August 2004 stating "It

*is proposed to transfer you to the labour inspectorate shortly subject to your completion of a full reconciliation of all outstanding absences....”*. Despite the claimant’s request being granted she refused to engage in any way with her superiors until November 2008 when she was taken off the payroll. Several requests were made of the claimant to reconcile her absences and she was informed that her refusal to do so would delay her transfer and could lead to the disciplinary action being taken against her.

The claimant accepted at the hearing that she had received all of the correspondence but made the decision to ignore all of it. She stated that the reason she chose to ignore the correspondence was because she was not satisfied with the way her previous grievance was dealt with. The Tribunal find that this explanation is simply not credible.

Following the claimant’s repeated failures to engage with the respondent, the respondent withdrew the requirement to reconcile the absences and reassigned her to the Labour Inspectorate with effect from the 13<sup>th</sup> August 2007. She failed to turn up for work on the 13<sup>th</sup> August 2007. Again all of the respondent’s correspondence was ignored by the claimant. Numerous attempts were made to get the claimant to engage with the respondent but she refused to engage with them. Numerous attempts were made to get the claimant to turn up for meetings but she refused to go and numerous attempts were made to get the claimant to turn up for work and she refused to. The Tribunal note that no explanation, medical or otherwise, was proffered by the claimant to explain her repeated failures to correspond with the respondent, to attend meetings or to attend for work. The claimant was given ample opportunity to rectify the situation but she intentionally failed to do so. She was given several warnings but chose to ignore them.

The claimant first made the decision to correspond with the respondent when she was taken off the payroll on the 21<sup>st</sup> November 2008. A sick certificate was submitted at that stage. It was the one and only sick certificate submitted by the claimant. The certificate covered the claimant from the 18.11.08 to 05.12.2008. The claimant ignored all correspondence from January 2009 to the date of dismissal and all attempts made to get the claimant to attend meetings failed. She was formally dismissed on the 21<sup>st</sup> April 2009. The Tribunal notes that the respondent had a very thorough multi step disciplinary procedure. However it should not have taken them as long as it did to act on the claimant’s absences particularly in circumstances where the claimant failed to produce any explanation for that prolonged and continued absence.

The claimant made several serious allegations against the respondent during the two day hearing, namely that she was the subject of bullying and harassment in the work place, that she was being stalked, that her personal mail was being tampered with, that she was forced to work in unsatisfactory conditions, and that her personal property was intentionally damaged. The Tribunal finds that no credible evidence was adduced by the claimant in relation to any of the allegations. None of the allegations adduced at the hearing had been brought to the respondent’s attention by way of the grievance procedure nor were they brought to the attention of the Gardaí. These allegations were not something the claimant seriously addressed in her mind prior to the hearing of this matter.

The Tribunal finds that there were substantial grounds to justify the claimant’s dismissal and therefore the claimant’s claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

The Tribunal dismisses the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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