

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

CASE NO.
UD220/2010
MN211/2010

against

EMPLOYER
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: Ms. K.T. O'Mahony B.L.
Members: Mr G. Andrews
Mr F. Dorgan

heard this claim at Nenagh on 7th July 2011

Representation:

Claimant: Michael J Breen & Co, Solicitors,
Main Street, Roscrea, Co. Tipperary

Respondent: No appearance

Claimant's case:

The claimant commenced employment in May 2004 with the respondent. Initially, he was driving a loading shovel in the quarry and some months later he was transferred to the batching and shipping office of the Readymix Plant.

The claimant was called to a meeting on 23rd January 2009 where management told him that he had been selected for temporary lay-off and that he should be back to work in around ten weeks when the CBM Plant would be ready for work. A few weeks into the lay-off he was sent to Galway to inspect a CBM plant. The claimant's position was that others with less service than he had were kept on.

Around late February the claimant's phone had been cut-off. AK was reluctant to sign it back to the claimant because there were some customer numbers on it but he did sign it back to the claimant as it was his only phone number. When the claimant asked

about returning to work. AK raised the issue of monies owed by the claimant's brother's company to the respondent. The company had bought some materials from the respondent. While the claimant had been named as a director in his brother's company he had relinquished his directorship. In March 2009 the claimant wrote to the respondent twice enquiring about returning to work.

By letter dated 14 May 2009 AK invited the claimant to a meeting to discuss a particular position available on the new CBM plant. At the meeting on 29 May 2009 AK immediately began to question the claimant about the undercharging of a customer for 3 metres of concrete. The claimant gave AK a number of reasons why the under-charging might have occurred. The alleged discrepancy was in an amount of around €75.00. The claimant did not know the customer in question. AK indicated that he wanted answers about the discrepancies before he would talk about the claimant's return to work. The claimant told AK that he felt uncomfortable and that this sounded like an allegation. AK also asked the claimant him about materials that were supplied to his brother and alleged that the input in to the daily planner had been tipped out regarding that transaction. The claimant examined the daily planner and concluded that it was "chopped and changed" on a daily basis. It was the claimant who had introduced the idea of having a daily planner to log to where and when loads were being delivered. Regarding that incident the only information that AK could give was that a lorry was seen in someone's yard. AK was referring to an incident which had occurred some thirteen months prior to the meeting. The incident had not been investigated at the time. AK mentioned the CBM job and said it was a matter of trust. The claimant felt uncomfortable. He told AK that he would discuss the issues with him later and left the meeting. His solicitor and the respondent's solicitors corresponded on the issues between the parties. The respondent was called on to formally set out the allegations and the investigative procedures to be followed but failed to do so. The claimant felt he had no option but to resign and claim constructive dismissal. By letter dated 4 December 2009 because of his conduct the claimant notified the respondent of his resignation.

Determination:

The claimant's allegation that he was unfairly selected for lay-off because he had longer service than other employees who were not put on lay-off is uncontested

The respondent's behaviour in calling the claimant to the meeting on 29 May 2009 to discuss an upcoming position in the CMB plant and converting that meeting into an investigative meeting without any prior notice to the claimant was wholly unreasonable and unfair conduct on the part of the respondent. While the claimant left the meeting of 29 May because he felt uncomfortable about the implications of what AK was saying, AK did not make any attempt to resolve the matter there and then but rather let it lie. The respondent failed to set out any allegations against the claimant as requested on behalf of the claimant by letter dated 4 September 2009. Having considered all the circumstances of this case the Tribunal finds that it was reasonable for the claimant to terminate his contract of employment with the respondent. Whilst the date of resignation is some three months after the letter requesting details of the allegations this is not fatal. Time was being provided to the respondent to set out the allegations. Accordingly, the claim

under the Unfair Dismissals Acts 1977 to 2007succeeds.

Compensation is the most appropriate remedy in this case. The Tribunal awards the claimant the sum of €54,000.00, in compensation under the Unfair Dismissals Acts, 1977 to 2007. This sum represents 90 weeks pay capped at €600.00 per week.

The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 is dismissed as this was a constructive dismissal claim.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

