

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE –**claimant**

UD1967/2009

against

EMPLOYER –**respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Herlihy

Members: Mr. B. O'Carroll
Mr. T. Kelly

heard this claim at Limerick on 5 April
and at Castleconnell on 27 May 2011

Representation:

Claimant: Ms. Martina Murphy, Murphy Boyce Solicitors,
Unit 7 Crescent Court, St. Nessans Road,
Dooradoyle, Limerick

Respondent: Mr. Lorcan Connolly B.L. instructed by
Mr. Donnough Shaffrey, Shaffrey & Company Solicitors,
1 Aspen Court, Cornelscourt Village, Dublin 18

The determination of the Tribunal was as follows:

This being a claim of constructive dismissal it fell to the claimant to make his case.

The claimant was employed from 16 June 2008 as assistant manager in one of the respondent's retail outlets. The employment was uneventful until around February 2009 when the manager of the outlet the claimant was working in became the area manager (AM). The claimant then took over as manager in the outlet and it was agreed that he would receive an increase in pay. Unfortunately the increase in pay was not reflected in his pay packet and the claimant also had concerns about outstanding overtime and holiday pay.

The respondent's payroll is administered from the UK and it is accepted that AM was slow to

process the paperwork to ensure the claimant received the correct rate of remuneration. AM told the claimant that it was her responsibility to contact the UK to authorise the outstanding monies. Eventually the claimant made telephone contact with the payroll section and matters then seem to have been largely resolved. The claimant at no stage put his complaints about these matters in writing in accordance with the respondent's grievance procedure.

By May 2009 the matter of back pay had been resolved but there was still an issue over holiday pay. On 20 May 2009 the claimant was called to Dublin as the respondent wanted to carry out an investigation into certain matters unrelated to the claimant's complaints. Following this meeting the claimant was out sick and the investigation made no further progress.

The claimant's position is that AM told him he would not get sick pay. The respondent's position is that they were unable to pay sick pay until medical certificates were received. The claimant gave one week's notice of his resignation on 13 June 2009. By this time the only outstanding issue between the parties was over five days holiday pay. The employment ended on 20 June 2009.

Determination

There is no doubt but that the claimant had a genuine grievance in regard to the correct level of his remuneration. Various remedies were open to him in this regard, specifically invoking the respondent's grievance procedure or taking a claim under the Payment of Wages Act to the Rights Commissioner service. The claimant availed of neither of these options and the matter was largely resolved by the time he was called to Dublin on 20 May 2009. From that time he was out sick and submitted his resignation without returning to work. In circumstances where the dispute the claimant had raised with the respondent was almost resolved the Tribunal is not satisfied that the conduct of the respondent went to the root of the contract or was so unreasonable as to justify a claim of constructive dismissal. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)