**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:

CASE NO.

EMPLOYEE – *claimant* UD122/2010

against

EMPLOYER – *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. P. McGrath BL.

Members: Mr. J. Horan
Mr. J. Flannery

heard this claim in Dublin on 23rd and 24th June 2011

Representation:

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Claimant: Mr. Justin MacCarthy, MacCarthy & Associates,
Solicitors, 10 Upper Mount Street, Dublin 2

Respondent: Ms Anna Broderick, O'Donnell Sweeney Eversheds, Solicitors,
One Earlsfort Centre, Earlsfort Terrace, Dublin 2

The determination of the Tribunal was as follows:-

The Tribunal has carefully considered the evidence adduced over this two day hearing. The burden of proof rests with the claimant to demonstrate that his decision to resign his position with the respondent company was reasonable in all the circumstances. In particular, the claimant must show that the respondent company acted in such a way that no ordinary person could or would continue in the workplace.

There has been no suggestion that the claimant was anything other than an able I.T. consultant. In his history with the respondent company the claimant has worked on up to three client premises as well as having 'on bench' time back on site of the respondent company. The work record is

undisputed and it seems the claimant was a valued member of staff.

There is no doubt that the relationship between the client and the respondent company has to be protected by the respondent company. The situation described in evidence is not uncommon. The claimant remained at all time an employee of the respondent company and his talents were sub-contracted out to the client company (F) working on site at the Revenue Commissioners head office in the city centre. At all times, the claimant took instruction from his line managers within the respondent company. At the same time, the claimant was obliged to foster good relations with employees of (F) as the client, and with employees within the Revenue site with who he was expected to work alongside.

It is accepted by the Tribunal that the claimant was well aware of the delicacy of the situation insofar as the respondent company's ability to generate revenue and therefore remunerate it's own employees was dependent on having good relations with (F) who was the principal contractor on site.

Needless to say, the respondent company also had a duty of care to the claimant and his fellow on-site employees to ensure that they were not treated arbitrarily or unfairly by (F) in the day to day operation of the site.

It is common case that on Thursday 23rd July 2009 the claimant was called to the offices of the respondent company to be advised that the client company (F) had requested that he be removed from the Revenue site. The claimant was informed that he was being taken out of the site as he had made an (F) employee feel uncomfortable and/or specifically for breaching the in house policy of not, under any circumstances, using the internal email for personal use.

It was accepted by the claimant that he had sent an email to an (F) employee of a personal nature and which was capable of being interpreted as being overly familiar and personally overwhelming. In explaining the context of the communication the claimant offered cultural differences as an explanation. The Tribunal fully accepts that this might be a rational explanation but must also look at the predicament with which the respondent company was faced. On the one hand a valued employee was being criticised, perhaps unfairly and on the other hand faced with a direct request from a valued client that the employee be taken off site immediately.

The Tribunal accepts that the respondent company made the right decision in acquiescing to the client demands. At all times it was accepted by both parties that the nature of the employment was such that a subcontracted employee might, at any time, be taken from one site and put onto another. It is in the nature of that business that movement is expected.

The Tribunal does further accept that the line manager D.H. who told the claimant that he was being removed from the Revenue site at the request of client (F) was probably not best pleased withthe claimant for effectively having caused the situation. Both parties agree that there was no demand for "benched" or between assignment employees in the company at that time and it maywell be that D.H. pointed this out to the claimant. However, the Tribunal does not agree that theclaimant's resignation was not motivated by a lack of alternatives but instead was motivated by asense of outrage on the claimant's behalf that the client (F) was being allowed to single him out andtake him off his assignment. It was made very clear to the claimant during the course of themeeting on 23rd July 2009 that as he continued to be in the employment of the respondent companythen he not jeopardise the relationship between the respondent company and it's client (F). Specifically, there could be no contract made with employees and

management of (F). The courseof action being adopted by the respondent company was seen by the claimant as unacceptable andtherefore he proffered his resignation. It is accepted by the Tribunal that the claimant was advisedagainst this course of action during the course of the meeting.

Even if the Tribunal didn't accept that D.H. had advised against resigning at the said meeting the respondent company through it's neutral HR department confirmed the resignation was not being accepted by the company by a number of emails in the course of the next few days.

Ultimately the claimant was asked to attend a meeting in the respondent company head offices with a view to establishing what the claimant wanted to do with respect to his ongoing employment status. The Tribunal could be critical of the fact that the claimant was not encouraged to bring a friend or advisor to the meeting as he had requested. However, the evidence presented in the 4th of August email from the claimant to HR tends to suggest that the resignation proffered some two weeks earlier was not being withdrawn and that the claimant was not prepared to continue working with the respondent company unless demands made by him were met by his employer. It is accepted by the Tribunal that the demands were untenable for the respondent company who could not be expected to jeopardise its relationship with its client in the absence of or the very least a grievance process being invoked.

In concluding the Tribunal finds that there was a number of options open to the claimant who tendered his resignation after a considerable period of reflection. The allegation of victimisation, genuinely felt by the claimant, was capable of being explored and dealt with in the respondent workplace. The claimant opted not to exercise this alternate approach.

The claim under the Unfair Dismissals Acts 1977 to 2007 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)