

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE – *appellant*

UD637/2010

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. N. Russell

Members: Mr. J. Hennessy
Ms. S. Kelly

heard this appeal in Kilkenny on 8th September 2011

Representation:

Appellant: Mr. James Kavanagh BL instructed by Mr. Kieran O'Brien, O'Brien & Associates, Solicitors, Mill House, Henry Street, Limerick

Respondent:

The determination of the Tribunal was as follows:-

The Tribunal has carefully considered the evidence adduced during the 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.

Claimant's case

The claimant came to Ireland in 2006 and began looking for work in hotels as an IT technician. When he began working for the respondent on the 4th December 2006 there were 20 – 30 employees. He signed a contract of employment after two weeks work and during his employment he worked in private homes, printers, cleaned windows and worked in a cinema. He worked on 4 to 5 sites which changed from week to week. His supervisor would phone him and tell him where the work was.

At first he got on well with his supervisor but after six months that changed. He had worked 35 hours a week in the first year, but that had reduced to 20 to 15 hours a week in the second year.. He didn't know if he had work the following day. He didn't feel he could trust the other employees and even though some of them had less service than he had they were getting more hours.

The claimant said the reason his hours were cut was because he would not tell on his colleagues. If he had a problem he would not go to his supervisor and he didn't think the respondent was treating him fairly.

He was working in the cinema and the respondent lost the contract. On the 24th February 2009, he received a letter from his employer for him to bring to Social Protection to enable him claim benefits. On the 22nd June 2009, he sent a letter to the respondent tendering his resignation.

Under cross examination the claimant denied he was offered driving lessons. He said he did not receive any letters from the respondent.

Determination

This claim came before the Tribunal under the Unfair Dismissals legislation. The claimant's case was that he was constructively dismissed by the respondent company. As the claimant tendered his resignation on the 22nd June 2009, the onus was on the claimant to satisfy the Tribunal that he was unfairly dismissed. The claimant failed to discharge this onus and, accordingly the Tribunal finds that the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)