

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE
Against
EMPLOYER
(respondent)

UD2615/2009

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr. J. O'Neill
Mr C. Ryan

heard this claim at Dublin on 23rd March 2011

Representation:

Claimant :

Mr. Olaleye Ladenegen BL instructed by Kevin Tunney, Solicitors, Millennium House,
Main Street, Tallaght, Dublin 24

Respondent :

Mr. Eamonn McCoy, Ibec, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

A preliminary issue arose in relation to the claim for unfair dismissal not being entered within the required 6 month period. The Respondent raised the matter at the outset. It was explained by the claimant's side that the letter dated 22nd May was not received by the claimant until 19th November 2009 and therefore the dismissal did not take place until November when the dismissal letter was received. The claimant did not reside at the address the letter was originally sent to. The respondent stated that the letter was not a letter of dismissal, it was merely confirming a non return to work. As far as the respondent was concerned the claimant resigned in May 09. It was stated by the claimant's representative that he did not resign his position. According to the respondent the claimant resigned. The Tribunal decided that a hearing of the case was necessary and the issue was whether the employee resigned or not, therefore the dismissal is in dispute.

In the opening statement by the claimant's representative, it was stated that the claimant chose to re-locate to Dublin around August 2008. This was as a result of a sexual harassment complaint against the claimant and he no longer felt he could work at the Clonmel Tesco. A decision to terminate the claimant's employment was later rescinded and he was offered reinstatement in the Clonmel branch. The claimant's final pay cheque was 17th April 2009. He received back pay from his dismissal date until reinstatement in October 2008. The claimant did not return to the Clonmel branch.

In evidence, the claimant stated that after he won his appeal of his dismissal in relation to the sexual harassment, he had already moved to Dublin with his family. He moved because of the allegation of sexual harassment and he felt he was not wanted in the store by the staff or Managers. At the meeting on 5th May 2009 with the Personnel Manager the claimant's move to Dublin was discussed and he was told she would get back to him. The claimant rang nearly every day for a response and was told she would get back to him. He received a letter dated 6th May indicating he should return to work on 11th May in Clonmel. It stated the transfer policy could then be discussed. He went to the Personnel Manager before that date and said he could not go back to Clonmel. She said she would see the Manager and get back to him. He called the Personnel Manager every week between May – November and she said he would have to go back to work in Clonmel and then apply for a transfer. He was unemployed for the 6 months.

The representative for the claimant stated that the respondent had said they would get back to him. This inferred that certain things were being considered. At no time was he told he was dismissed.

Determination

The claimant was employed to work in the Clonmel branch. A complaint was made against him supported by two witnesses. This led to his dismissal in October 2008. The Tribunal is not concerned with that dismissal as the claimant's appeal was successful and the dismissal was overturned. He was due to return to work, but he stated two reasons for not returning. He had moved his family to Dublin and it would not make economic sense and he said he was not prepared to move back. He also stated that the complainant was still in the store. He was slow to come out with that reason. He was invited to go back to Clonmel and then apply for a transfer. It is the decision of the Tribunal that the claimant abandoned his job because he refused to go back to his place of work. The claimant was not dismissed.

The claim fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)