

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE –**claimant**

UD979/2010

RP1352/2010

MN950/2010

WT404/2010

against

EMPLOYER –**respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Ryan

Members: Mr P. Pierson
Mr N. Dowling

heard these claims at Mullingar on 2 November 2011

Representation:

Appellant:

Ms Colette Egan BL, instructed by Mr Brendan Irwin,
Brendan Irwin & Co. Solicitors,
6 Garden Vale, Athlone, Co. Westmeath

Respondent:

Mr Ronnie Lawless, IBEC West Regional Office,
Ross House, Victoria Place, Galway

The determination of the Tribunal was as follows:

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

At the outset the claims under the Redundancy Payments Acts, 1967 to 2007, the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 were withdrawn

Determination:

The Claimant gave evidence that he resigned from the company on 21 October 2009. The reason he gave for resigning was due to the stress he was under as a result of bullying by the managing director (MD) of the respondent. This bullying took the form of shouting and abusive behaviour directed at the claimant by MD. The claimant commenced working with the respondent in 2007 and it is accepted by and large by the claimant that the first two years of his employment were uneventful and while there was sporadic shouting by MD it was not intolerable.

According to the claimant matters changed in September 2009 when the abuse became unbearable resulting in the claimant attending his doctor on a number of occasions. A number of medical certificates were submitted to the Tribunal certifying that the claimant was unfit to attend work. Two of these certificates certified that the claimant was unfit for work due to "work related stress". MD gave evidence that the claimant was an excellent worker as a result of which he was promoted to a supervisory role with the company. He denied that he bullied the claimant but admitted that he may have used strong language on the odd occasion. Because of the number of medical certificates MD met with the claimant on 5 October 2009 and made certain proposals which he hoped would take any pressure of the claimant. These proposals were put in writing in a letter given to the claimant that same day. The claimant acknowledges that he received the letter but denies that the proposals were discussed at the meeting on the morning of 5 October. The proposals reduced the workload of the claimant on a temporary basis whilst maintaining his existing level of pay.

The Tribunal has to decide whether the Claimant was constructively dismissed. It is clear that the Claimant resigned from his employment on 21 October 2009. Constructive dismissal is defined in section 1 of the Unfair Dismissals Acts 1977 to 2007 which provides:-

“dismissal in relation to an employee means the termination by the employer of his contract of employment with his employer whether prior notice of determination was or was not given to the employer, in circumstances in which, because of the conduct of the employer the employee was or would have been entitled or it was or would have been reasonable for the employee, to terminate the contract of employment without giving prior notice of the termination to the employer”.

The Tribunal must consider whether, because of the employer’s conduct the claimant was entitled to terminate his contract or it was reasonable for him to do so.

An employee is entitled to terminate the contract only when the employer is guilty of conduct which amounts to a significant breach going to the root of the contract or shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. In the case of *Brady v Newman UD 330/1979* the Tribunal stated

“..... an employer is entitled to expect his employee to behave in a manner which will preserve his employer’s reasonable trust and confidence in him so also must the employer behave”.

The Tribunal has to decide whether the employer’s conduct amounts to undermining the relation of trust and confidence between the parties in such a way as to go to the root of the contract. The contract test was summarised in the English case of *Western Excavating (ECC) Ltd v Sharpe(1978) ICR 121* which stated, inter alia:

“.... If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract then the employee is entitled to treat himself as discharged from any further performance”.

The reasonableness test asks whether an employer conducts himself or his affairs so unreasonably that the employee cannot fairly be expected to tolerate it any longer and justifies the employee leaving. The proximate cause of the Claimant's resignation was the on-going abuse by MD.

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Circumstances which render it reasonable for an employee to terminate the contract of employment may constitute 'constructive dismissal' and may also justify resignation. If the changing nature of the tasks for which an employee was employed constitutes a repudiation of the contract of employment then a repudiatory breach would occur and a resignation may be considered an unfair dismissal by virtue of constructive dismissal. The facts of this case do not amount to such a breach of contract to the extent that the employee was left with no reasonable alternative but to leave. Accordingly, the Tribunal considers in applying the case of reasonableness to the claimant's resignation that he was not constructively dismissed. If the claimant has an honest belief that he views the work environment as producing intolerable conditions he is entitled to resign and such resignation may be viewed by the Tribunal as a 'forced resignation' constituting a 'constructive dismissal.' In *Wetherall (Bond St. WI) v. Lynn (E.A.T.)*¹, Bristow J. stated that:

"Entitlement to terminate a contract by reason of the conduct of the employer is a perfectly familiar concept of the law of contract. Like much else it is easy to formulate but can be difficult to apply...The law of contract for this purpose is that where an employer so conducts himself as to show that he does not intend to be bound by the contract of employment the employee is entitled, at his option, either to treat the contract as at an end, and cease performing his part...The question of what is reasonable in the circumstances having regard to equity which has to be considered in cases of unfair dismissal, applies equally to the facts...It is the conduct of the employer which you must look at...But it is not the epithets which his conduct attracts, but whether you are entitled to treat your contract as at an end, and whether if you exercise your option to do so you have been 'constructively dismissed.'"

Having carefully considered the evidence adduced the Tribunal could not find any substantial grounds that a dismissal took place in this case. The claimant did not produce sufficient and adequate evidence that the respondent dismissed him even in a constructive fashion. The claimant did not act reasonably in resigning. The Tribunal notes that certain strong language was used, which is unacceptable, but this in itself was not sufficient reason for the claimant to resign. Except in very limited situations an employee must exhaust all avenues for dealing with his grievances before resigning. Therefore the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)