

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO.

EMPLOYEE –**Claimant**

UD815/2007  
WT275/2007

against

EMPLOYER - **Respondent**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007  
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr T.L. Gill  
Mr T. Brady

heard these claims at Tullamore on 27 August 2008, 15 November 2010,  
5 April & 27 June 2011 and 13 February 2012

**Representation:**

Claimant:

Mr Peter Leonard BL on the first day instructed by  
Mr Richard Grogan, P.C. Moore & Co. Solicitors,  
17 South Great Georges Street Dublin 2, in person on the  
second day, Mr Leonard instructed by Mr Grogan, now of  
Richard Grogan & Associates, Solicitors, 16-17 College Green,  
Dublin 2 on the third day, Mr Leonard instructed by  
Ms Julienne Paye of Richard Grogan & Associates on the fourth day,  
Mr Grogan on the final day

Respondent:

Mr Henry Arigho, Henry Arigho & Co. Solicitors, Main Street,  
Moate, Co. Westmeath on the first day, no appearance or  
representation on behalf of the respondent on the second day,  
Mr Pronsias O'Maolchain BL instructed by Mr Arigho on the third day,  
In person on the fourth day and no appearance by or representation on behalf of the  
respondent on the final day

The determination of the Tribunal was as follows:

The first two days of hearing were before a different division of the Tribunal. On the first day of

hearing the claim under the Organisation of Working Time Act, 1997 was withdrawn, the claim under the Unfair Dismissals Acts, 1977 to 2007 could not proceed as it became apparent that the claimant needed the assistance of a Latvian interpreter. The matter was adjourned without an agreed date for resumption.

The listing officer then proposed a date in November 2008 which proved to be unsuitable for the claimant's representative. Before there had been any agreement on a date for a resumed hearing the claimant's representative wrote to advise the Tribunal that the matter had been compromised between the parties and asked that the matter be put on hold. By letter dated 3 November 2008 the claimant's representative advised that a settlement had been entered into and that the matter be put back until 20 July 2009.

In the absence of any further communication the listing officer wrote to the claimant's representative on 31 July 2009 to clarify the up to date position. The claimant's representative replied on 15 September 2009 that the matter again needed to be listed. Unfortunately this appears not to have been acted on and eventually the case was re-listed for 15 November 2010. Shortly before that hearing day the respondent's then representative submitted a medical certificate on behalf of the respondent and that hearing was unable to proceed.

The matter was then listed before this division of the Tribunal on 5 April 2011 and it being a claim of constructive dismissal it fell to the claimant to prove her case. The claimant gave direct evidence and was cross-examined on that day.

The hearing was adjourned until 27 June 2011 on which day the respondent's representative was not in attendance and the respondent made an application that he be granted an Urdu interpreter. His application in this regard was granted and the matter adjourned peremptorily against the respondent until the final day of hearing. In the meantime the respondent's solicitor came off record.

**Determination:**

Being satisfied that the respondent was properly on notice of the hearing; the Tribunal is satisfied, based on the uncontroverted evidence, that the claimant was constructively dismissed on 17 August 2007. Having heard the evidence of mitigation of loss the Tribunal awards €20,000-00 under the Unfair Dismissals Acts, 1977 to 2007.

The evidence having shown that there was an element of the claimant's remuneration that was not being declared for Revenue or Social welfare purposes the Tribunal directs that copies of this order be sent to both the Revenue Commissioners and the Minister for Social Protection as provided in Section 8 (12) of the Unfair Dismissals Acts.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)