

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.  
UD1168/2010

EMPLOYEE     -*claimant*

against

EMPLOYER     -*respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman:     Ms. M. Levey B.L.

Members:     Mr M. Carr

                  Mr P. Trehy

heard this claim at Dublin on 22nd November 2011

#### Representation:

Claimant: McMahon O'Brien, Solicitors, Mount  
                  Kennett House, Henry Street, Limerick

Respondent: Mr. Tim O'Connell, Ibec, 84/86  
                  Lower Baggot Street, Dublin 2

#### **Background:**

The case before the Tribunal is one of constructive dismissal; the fact of dismissal is in dispute and the Tribunal heard evidence from the claimant first. The Respondent company processes and packages meat products for retail outlets.

#### **Claimant's case:**

The claimant worked with the Respondent for six years. He started as a general worker and was twice promoted. He worked in a junior management position towards the end of his employment which entailed supervising staff and production lines. JL was the operations manager and FM was the general manager. MV was the production manager and the claimant's direct line manager.

He told the Tribunal that workwise things were ok up until 2010. The company had decided to invest in two new meat processing and packaging machines to replace the older versions that they had. He himself was sent to the UK to have training in the use of the machines. He told the Tribunal that he did not get training as such but that he just got information on the amount of product "the amount of tonnes".

On Sunday 14<sup>th</sup> February 2010 the Respondent changed from the old machines to the new machines and “things went wrong, parts were breaking and the machines were not running”. They were supposed to or had been producing 1,800 cases per day and they only produced 600 cases. On Tuesday 16<sup>th</sup> the problems continued. There were meetings about the situation and these meetings did not go well. He was asked by FM to produce a manual handling book (MN book) as an explanation for how to use the machines. JL also told him that it was his job to produce the MN book. He felt that it was not his job to do the MN book as he was not an engineer. There were technicians from the machine company and the Respondent also had their engineers. He did go and take photographs of the machines to make a MN book.

The claimant explained to the Tribunal that at one time JL got a call from his wife and then said to him “I can’t go f\*\*\*\*\*” home and that’s your fault”. Also MV told him that FM was not happy with production because not enough was being produced “there was too many shorts”. The claimant said that he had been told by the managers that they had to pay a fine to their main customer if they had not delivered the full amount of produce.

The next day on Wednesday 17<sup>th</sup> the machines worked fine (at this point only one new machine had been installed). The following day he was in the canteen with colleagues when MV called in and asked him when he was leaving the respondent company. He replied that he would not leave unless he was paid redundancy money. He felt bad as this was said in front of colleagues. At this point it had been fourteen days since he had a day off.

At some point he said to MV that he was not going to lose his job because of the machines and that he was not the responsible for the machines.

The management then wanted to install the second machine and he told them that maybe they should wait until they had the problem with the first machine sorted out. The claimant clarified for the Tribunal that there was one old machine and one new machine in service at this point.

He had a meeting with JL and MV on 19<sup>th</sup> February about the machines. JL told him that he would “throw him out of the f\*\*\*\*\* factory”. He did not reply to JL. At this meeting he asked for a day off. They told him that the engineering manager had not had a day off in two weeks so therefore he could not have a day off. He told them that he felt dizzy and needed a day off but they refused him a day off.

On his last day in work they had “shorts”. MV called him and told him once again that “someone is going”. MV also told him that he could not give him a day off. He told MV that he needed a day off. He went to human resources and told the HR manageress (PH) and told her that he could not work under those conditions. PH tried to talk to him. He left on 22<sup>nd</sup> February 2010.

PH offered him another job in another unit. He told her that he could not work for the company as he would be working under the same management people. He explained to the Tribunal that he could not work for the company as he did not think that management should speak to workers in that way and that it was a very stressful job.

The claimant was asked if he was invited to invoke procedures and he explained that he met the HR manageress and he was offered another position and was told to take a week off to think about it.

A letter from PH from the HR department was opened to the Tribunal:

“In our letter to you dated the 24<sup>th</sup> February 2010 we asked you to reconsider your resignation and

come back to us before Monday 8<sup>th</sup> March 2010. Upon receipt of your letter today, 4<sup>th</sup> March 2010, we understand this to mean that it is your considered decision to resign from (the Respondent Company).

The company, with regret, will accept your resignation effective from the date of receipt of your letter, 4<sup>th</sup> March 2010. Therefore your notice period will expire on 4<sup>th</sup> April 2010 and you will be paid in lieu of notice up until this date.

Any outstanding holiday entitlements owed to you will be paid into your bank account at the end of the month. Your P45 and final payslip will also be issued at the end of the month and will be posted to you.

.....

We wish you every success in your future endeavours.”

The claimant then gave evidence as to his loss.

**Respondent’s case:**

The Tribunal heard evidence from JL. He explained that they had decided to replace machines in 2010. They did not expect a perfect transition. No one was dismissed during that period.

The claimant was not told to write a manual regarding the machine handling. The machine manual was provided by the manufacturer. The work instruction was written by the team leader.

The Tribunal heard evidence from the HR manageress PH. She met the claimant who had walked off the work site. He told her that he had had enough, that all the blame was being placed on him. He did not want to see the product manager or another manger again. He told her that he was leaving and that he could get alternative work.

She asked if they could talk. She told the claimant that they should sit down and talk.

**Determination:**

Having considered all the evidence the Tribunal determines that the claimant did not engage in the consultation process or the grievance and appeal process notwithstanding the fact that this was conveyed to him orally and by letter. The claimant’s position was one of junior management and therefore he would have been aware of the grievance process; but even if he was not his dealing with human resources clearly indicated that he would have been informed to participate in the process. The claim under the Unfair Dismissals Acts 1977 to 2007, fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

