

**CORRECTING ORDER
EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

EMPLOYEE

- claimant

against

EMPLOYER

- respondent

under

CASE NO:

UD1126/2010

MN1095/2010

WT470/2010

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE OF 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. O. Nulty

heard this appeal at Cavan on 8 November 2011 and 31 January 2012

Representation:

Claimant: Mr. Alan Crossan, Garrett J. Fortune & Co., Solicitors, 11, Church View,
Cavan

Respondent: Terry Cummins, IBEC, Irish Printing Federation, Confederation House,
84/86, Lower Baggot Street, Dublin 2

This correcting order should be read in conjunction with the order dated 9th March 2012. The claimants representative should read Mr Alan Crossan, Garrett J. Fortune, Solicitors, 11 Church View, Cavan, and not Mr Garrett Fortune, Garrett J. Fortune Solicitors, 11 Church View Cavan.

Sealed with the seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

- claimant

CASE NO:
UD1126/2010
MN1095/2010
WT470/2010

against

EMPLOYER

- respondent

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE OF 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. O. Nulty

heard this appeal at Cavan on 8 November 2011
and 31 January 2012

Representation:

Claimant: Mr. Garrett Fortune, Garrett J. Fortune, Solicitors, 11, Church View, Cavan

Respondent: Terry Cummins, IBEC, Irish Printing Federation, Confederation House,
84/86, Lower Baggot Street, Dublin 2

The decision of the Tribunal was as follows:

Claimant's Case:

The claimant gave evidence with the assistance of an Interpreter. She commenced employment with the respondent company on May 25th 2005 as a general operative. The work she carried out included lifting boxes. There were no problems with her employment until September 13th 2006 when she had an injury with her right hand in work lifting a heavy box. On a number of occasions she had long periods of sick leave due to this injury. She

attended her own doctor and a consultant receiving x-rays and injections. She also attended the company doctor until the summer of 2009. She submitted certified medical sick certificates while absent.

In November 2008 she attended a meeting with the Plant Manager (AK), the Production Manager (GOB) and a member of staff who acted as the respondent's interpreter. She brought a member of staff from the Department of Social Protection to act as an interpreter. He was not allowed to attend the meeting. She was asked when she would be fit to return to work and was advised she would have to get a medical certificate from the consultant to state the same. She replied she did not know when she would be fit to return as she had to attend her consultant but was not asked to get a "fit to return to work" certificate from the company doctor. She was asked to leave the factory and told the Tribunal that she did not want to leave her job.

When put to her that two witnesses for the respondent company would state she had attended a review meeting with the AK and JOB on January 7th 2010, she replied she had not attended a meeting in January; it had been in November 2009. There had been no mention at the meeting, as stated in the respondent's letter dated March 29th 2010, that "*she had accepted that if she did not contact the company by 31 January 2010, she would not be returning to her employment.*"

She received a letter and her P45 from the respondent company in February 2010. On March 16th 2010 her solicitor wrote to the respondent company requesting information as to:

1. *Confirm the reasons why our client was dismissed.*
2. *Confirm that you will adequately compensate our client.*
3. *That you furnish our client an appropriate reference.*

They also informed the respondent that if they did not get a response within a certain period of time, Court Proceedings would be issued.

The claimant gave evidence of loss stating she was in receipt of disability benefit and was medically unfit to work.

On cross-examination she refuted that a meeting had taken place on January 7th 2010 but said it was in November 2009. When put to her that her solicitor's letter to the respondent company stated "*she had attended at a meeting with yourselves on the 7th January 2010.....*", she again stated the meeting had taken place in November 2009. When put to her the respondent that the respondent had sent her P45 in June 2010 she replied no, it was in February 2010.

Respondent's case:

JOB gave evidence that he was the production manager at the plant. Absenteeism was part of his remit.

In early January 2010 he and the general manager met with the claimant. The company asked about her wellbeing and if she was going to be resuming work.

It was agreed that the claimant would make contact before the end of January 2010 and let the company know if she was going to be fit to return to work. The next contact the company had with her was on June 2nd 2010 when the claimant arrived unannounced with another person

and said she was ready to resume work. The person accompanying her was denied access as the visit was unannounced and anybody entering the plant has to be checked, declare where they had travelled in the past 12 months and go through other procedures.

The company took on board her request and asked that a final fit to return to work certificate be produced from either her doctor or the company doctor.

When the certificate arrived plans would be put in place to have her return to work. That never happened.

JOB was absolutely certain that the dates he gave the Tribunal were correct.

He stated that at no time was the company grievance procedure used.

DC HR manager in her sworn evidence stated that she was a trainee at the time of the meeting which was held on 2nd June 2010. On that day the claimant advised the company that she was ready to return to work. The company requested that a final certificate be produced advising them of her fitness to resume.

DC also confirmed that all holiday pay had been paid to the claimant in January 2010 payslips, a total of 71.2 hours being the balance owed for 2009.

KK, an employee of the company stated that he acted as interpreter on occasion. He was present at the meeting and while he thought it was 2010 he was unable to confirm the exact date the meeting took place.

AK general manager stated that the company employed 600 people. The meeting in January 2010 definitely occurred, the claimant said she was attending the Social Welfare doctor and she was told to let the company know by the end of the month if she was returning, if they hadn't heard from her by then they would assume she was not coming back. On receiving correspondence from the claimant's solicitor in March 2010 the company responded by outlining the situation regarding her January meeting. The company also advised the claimant and her solicitor by letter on 27th April advising that her job was still open and received a reply dated 24th May with a medical certificate stating that she was still unfit to work.

Under cross examination AK said that the meeting was a level headed discussion. The company was looking for an update as the claimant had been unable to work for a considerable period of time. They requested a final certificate to allow her to work, nothing arrived. A P45 was not sent to the claimant until June 2010 when the company had received another letter from another solicitor.

In closing submissions the company representative advised the Tribunal that the job was still available to the claimant.

The claimant's representative advised the Tribunal that the claimant is still unfit for work.

Determination:

The Tribunal finds that the claimant has failed to prove that she was dismissed and determines that the claim under the Unfair Dismissals Acts fails. The Tribunal is influenced by the strong conflict of evidence between the claimant and the respondent in relation to the circumstances surrounding the claimant's cessation of employment.

In the claimant's claim that she was dismissed the Tribunal prefer the evidence of the respondent and therefore the claim under the Unfair Dismissals Acts fails.

A claim for minimum notice does not arise in a case of constructive dismissal, therefore the

claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2007 must fail and is also dismissed.

From evidence adduced in respect of her claim under the Organisation of Working Time Act, 1997, this claim also fails.

Sealed with the seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)