

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

- **Claimant**

UD2078/10
MN2028/10
WT923/10

Against

EMPLOYER

- **Respondent**

Under

**UNFAIR DISMISSALS ACTS, 1977 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 T. O'Grady
Mr S. O'Donnell

heard this claim at Dublin on 7 March
and 15 May 2012

Representation:

Claimant: Mr Kevin Callanan BL, instructed by Ms Dorothy Walsh
Dorothy J Walsh & Company, Solicitors, 44 Laurence Street,
Drogheda, Co Louth

Respondent: Mr Eamonn McCoy, IBEC, Confederation House,
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

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

Claimant's Case:

Having earlier worked in a part-time capacity in 2006 the claimant was employed on a full time basis in the role of customer advisor/van driver from 15th September 2008 in the respondent's north side DIY store, one of several around the country. He did not recall having received an employee handbook at the start of either period of employment.

He reported to the warehouse manager (WM). He encountered difficulties with WM at the start of his employment in September 2008 but these were resolved at a later date. His 2010 job performance appraisal review was most favourable. Sometime later a new warehouse manager (NW) was appointed and from that point he reported to NW.

Daily issues arose with deliveries missing or being added on. During a stock-take, paperwork went missing and he was held accountable for the missing paperwork.

Often items were not picked and he had to pick them. He raised these issues with store managers. There were improvements but then they reverted back to the old ways. He came in 30 – 60 minutes early, skipped lunch breaks and put next day's deliveries in the van the night before.

He was expected to leave the store by 9.30am each morning. Frequently this was not possible as the delivery dockets had not been printed. He clocked in and out using his swipe card. He did deliveries in the morning and left heavy deliveries till the afternoon when he had a second person working on the delivery. His finish time was 4.00 pm.

There were changes to the way delivery dockets were to be dealt with. He got the customer to sign for deliveries but if customer's signature was not in right place NW berated him.

He attended a series of meetings with NW and HM. Three meetings were held in total. NW said she needed to talk to him. The human resource manager (HR) attended one meeting and the hardware manager (HM) attended another meeting. Two of these meetings were on 28 June and 30 June 2010.

The claimant felt unable to instigate a grievance following the two meetings he attended. He contended he was hitting a brick wall after each person he spoke to.

He did not feel the two meetings on the 28th June and 30th June were informal but understood them to be disciplinary. As he thought he was being sacked he spoke to the general manager (GM) either on 29 or 30 June and asked for one month "to get his house in order". The claimant did not return to work after the 30 June meeting and his resignation was submitted by his solicitor on 5 July 2010.

The claimant has not secured employment since he tendered his resignation. He is studying full time since September 2011.

Respondent's Case:

NW is Store Manager. She had responsibility for the control of inward and outward stock.

Following an audit of the store, and issues arising in relation to customer deliveries, NW asked the claimant to attend an informal meeting on 28 June 2010. Following a review of the previous ten delivery days, there were instances where manifests were not signed by the claimant and a manager. In order to be audit compliant NW asked the claimant following his deliveries to pass all the manifests to her for checking. In her absence she asked the claimant to pass them to another manager.

NW became aware the following two days that the claimant had not left the store before 11 am and he did not consult any manager on his return to the store following his deliveries. She asked him to attend a second informal meeting on 30th June. NW again discussed passing the manifests to a Manager for checking. The claimant said he understood this instruction. NW told him if he did not pass the necessary paperwork to a Manager on a daily basis she would have to take things to the next level which was Step 1, the formal process. NW contended that that most employees understood this process.

Determination:

The Tribunal is satisfied that NW had legitimate concerns about the claimant's performance of his duties in regard to the issues arising from the audit which related to customer deliveries, the duties performed by the claimant. As a result of these concerns NW spoke informally to the claimant on 28th and 30th June 2010. The claimant was not happy about the approach of NW such that he spoke to GM asking for time to get his house in order. The claimant did not make known any complaint about NW to GM at this or any time. He never returned to work after 30th June 2010 and his resignation was submitted by his solicitor on 5th July 2010. This letter was the first time the respondent was put on notice of the claimant's dissatisfaction with his treatment at the hands of NW. The Tribunal is satisfied that the claimant was aware of the Disciplinary and Grievance Procedure but did not invoke it. In the circumstances the claimant should have used this procedure before resigning. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

At the outset of the hearing the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn.

No evidence having been adduced in relation to the claim under the Organisation of Working Time Act, 1997 the claim under this Act fails for want of prosecution.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

