

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE *-Claimant*

CASE NO.

UD436/2010

RP623/2010

MN402/2010

WT185/2010

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 R. Maguire, B.L.

Members: Mr J. Goulding
 Ms M. Finnerty

heard this claim at Dublin on 10th February 2012 and 25th May 2012

Representation:

Claimant: Mr. Stephen Boggs B.L. instructed by Mr Noel J Gargan,
 Christie & Gargan, Solicitors, Unit 2, Stewart Hall, Parnell Street, Dublin 1

Respondent: No appearance or representation on behalf of the respondent.

The determination of the Tribunal was as follows:

The Tribunal is satisfied that the liquidator was duly notified of the hearing.

It was the claimant's uncontested evidence that her role comprised of book-keeping duties. In or around March 2006 the company entered into examinership. However, a new investor (Mr F) was found and the company continued to trade. The claimant continued in her position as accounts manager with full responsibility for book-keeping and accounts.

However in March 2009 the financial situation of the company deteriorated. Suppliers constantly contacted the claimant on her mobile phone as they had not been paid for goods. From in or around this time the company did not pay wages on the dates and times they were due.

In May 2009, Mr. F met with all staff and introduced a new manager to operate the business,

resolve the issues at hand and pay outstanding wages. The new manager implemented a number of cost-cutting exercises. However, the claimant did not receive her full wages and when she requested her wages she would be given €50 or €100 intermittently. The claimant sought her wages again after she had not been paid for a period of time and was told that if she did not like the situation to “get out.”

The claimant outlined to the Tribunal the difficulties she had with the new manager in attempting to perform her role as accounts manager. By mid-September it became clear to her that the new manager was trying to force her from her employment. The claimant’s health had begun to suffer because of her employment circumstances and she found it necessary to attend the doctor on 23rd October 2009 in relation to her situation at work and was prescribed medication for a six-month period. By the time she attended her doctor she had not been paid for some seven weeks. The claimant resigned by letter dated 13 November 2009.

The claimant gave evidence pertaining to loss.

Determination:

Based on the claimant’s uncontested evidence the Tribunal finds that she has discharged the burden of proof in relation to her claim of constructive dismissal. The Tribunal awards the claimant the sum of €47,500 under the Unfair Dismissals Acts, 1977 to 2007. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, must fail, the claimant having resigned from her employment.

The Tribunal having found that a constructive dismissal occurred dismisses the appeal under the Redundancy Payments Acts, 1967 to 2007.

The Tribunal also awards the claimant the sum of €1,000.00 (being the equivalent of ten days gross pay) under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)