

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE - **Claimant**

UD2117/2010

against

EMPLOYER - **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Herlihy

Members: Mr G. Andrews
Ms H. Henry

heard these claims at Castleconnell on 20 June
and 12 September 2012

Representation:

Claimant:

Ms Colette Hannon BL instructed by Mr Kieran O'Brien,
O'Brien & Associates, Solicitors, Mill House,
Henry Street, Limerick

Respondent:

Ms Michelle O'Riordan, Holmes O'Malley Sexton Solicitors,
Bishopsgate, Henry Street, Limerick

The determination of the Tribunal was as follows:

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

The respondent, which was incorporated in June 2006, operates a pig farm and the claimant was employed as a labourer on the farm from May 2004. It was common case that the claimant, along with the other employees of the respondent agreed to be paid a net amount per week with the respondent making Tax and PRSI payments in accordance with the net amounts. In other words pay was calculated net to gross as opposed to gross to net in most employment situations. The respondent's accountant gave evidence of having advised the respondent to pay gross to net.

During his period of employment with the respondent the claimant married and had children thus

affecting his tax credits. Because of the agreement to pay the claimant a net amount this meant that the benefit of lower tax liability fell to the advantage of the respondent. Conversely any increase in levy, USC, tax or PRSI was an increased cost to the respondent.

The claimant began to be concerned about his tax situation in 2008 after applying for family income supplement. In 2009 he discovered that a second P60 had been issued which was different from the one he had been issued in January 2009. The first P60 was issued by the respondent's bookkeeper on demand from the claimant. The respondent's position is that P60's were prepared by their accountant after any adjustments to tax and other deductions had been made with the respective state agencies. It accepts that because of the need to make adjustments at the end of the financial year the payslips produced during the year are subject to amendment and that amended payslips are not issued.

There is a dispute between the parties about whether payslips were available and whether the claimant complained about his tax affairs to the managing director (MD). On 26 March 2010 the claimant submitted his resignation and then worked his four week notice period. No reason for his resignation was given.

Determination:

The claimant has based his claim of constructive dismissal on the treatment of his tax affairs by the respondent. It is common case that the claimant agreed a rate of net pay from the start of the employment with the respondent's predecessors. The claimant was concerned that the respondent's conduct was going to leave him with ongoing arrears of tax. The evidence is that the respondent was conducting its affairs in regard to the claimant in the correct manner. The claimant never, even in his letter of resignation, put a complaint in writing to the respondent about any dissatisfaction with this arrangement. The claimant was able to work his period of notice without difficulty. The claimant has shown no fundamental breach of his contract of employment. For all these reasons the Tribunal is satisfied that the claimant has not shown grounds such as to justify a claim of constructive dismissal. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)