

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE  
– *claimant*

UD462/2011  
WT298/2012

Against

EMPLOYER  
- *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. N. Ormond  
Ms M. Finnerty

heard this claim at Dublin on 21 June 2012, 30 October 2012 and 31 October 2012

Representation:

Claimant(s) :

Mr. Francis Rowan, FX Rowan & Co, Solicitors, 14 Upper Pembroke Street, Dublin 2

Respondent(s) :

Mr. Eamon McCoy, IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

#### **Determination:**

On the 17th February 2006 the claimant was offered, and accepted, the position of production supervisor with the respondent. This according to the claimant meant more work and more responsibility. In his previous role he was paid hourly and paid overtime for extra hours. In this new role he was paid a fixed salary with no overtime payments. The new position involved some office work. In September 2008 the production manager (AC) resigned and was not replaced. In January 2009 the company lost a large account from a supermarket multiple and as a result there were several redundancies, including that of another production supervisor (DB). The respondent did get new orders from other retail stores and this created extra work. In January 2009 the claimant spoke to his manager (RC) about his increased workload. The claimant stated that (RC) promised him a bonus but this never materialised and RC left the

company soon after. The new manager (EM) did make some changes which were helpful but there were on-going problems with orders and stock shortages. The claimant gave evidence that he was stressed and attended his doctor who prescribed medication for him and gave him a certificate covering a period of approximately ten days in July 2009. When the claimant returned to work after this period of sick leave he gave a medical certificate to EM and also handed him a letter of resignation. ED persuaded him not to resign saying the problem was with the company administration system rather than him and the claimant withdrew his resignation.

The claimant gave evidence that he worked under a number of different managers {RC,EM,SD and RMcD} in the period from the end of July 2009 to August 2010.

At a meeting on the 27 August RMcD queried why agency staff were employed by the claimant. The claimant explained that agency staff was required to provide sufficient cover on production and to cover his leave for the period 13 August to the 25 August 2010. He also got prior approval from LD to employ agency staff.

On the 30th August GM and SD met the claimant and questioned him on why the packaging stock was not counted in full on the previous Saturday and why there was no cover for dispatch on Monday afternoon. The claimant explained that there was a formula error in the plan and in addition insufficient staff numbers. At that meeting the claimant was questioned further on this and he threw his swipe card on the table and resigned. The claimant submitted a letter of resignation on the 31 August 2010. At the Tribunal hearing the claimant gave evidence that he resigned because "he was very stressed after the meeting of the 27 August with RMcD and that there was so much pressure on him".

Witnesses from the respondent company who had managed the claimant over the period of employment all stated that the claimant never raised any issues around personal treatment. The claimant never raised any grievance with them. SD told the Tribunal that the purpose of the meeting on the 30 August 2010 was to understand why packaging stock was not counted and why dispatch did not have sufficient cover. He wanted to establish what caused this, find a resolution and move on.

The Tribunal must consider whether it was reasonable for the claimant to terminate his contract because of the employer's conduct. An employee is entitled to terminate the contract only when the employer is guilty of conduct which amounts to a significant breach going to the root of the contract or shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.

In reaching its decision the Tribunal considered all the evidence adduced and particularly noted the following:

- \* the claimant did not complain to any of his managers or to the human resources department about the way he was being treated;
- \* he did not invoke the grievance procedure. In this respect the Tribunal is satisfied that he was aware of the existence of the grievance procedure from a management course he had previously undertaken;
- \* the company did make some efforts to reduce the claimant's workload - EMcD introduced changes in the production area and moved some work away from the claimant;

- \* the meetings between claimant and his managers were instigated by the managers. The claimant never requested any meeting to complain about the way he was being treated;

The Tribunal considered the case of **Liz Allen V Independent Newspapers (Irl) Ltd UD 641/2000** ("the Allen Case") in which Ms Allen successfully brought a claim for constructive dismissal but distinguishes this case from the one currently before the Tribunal in that Ms Allen complained about the way she was being treated [bullying, hostility, isolation and marginalisation] on several occasions whereas the claimant did not complain at all about the way he was treated.

Having carefully considered the evidence adduced the Tribunal could not find any substantial grounds that a dismissal took place in this case. The claimant did not produce sufficient and adequate evidence that the respondent dismissed him even in a constructive fashion. The claimant did not act reasonably in resigning. The Tribunal accepts that he was suffering some stress in the workplace and that he did complain about the administration part of the job but this was not sufficient reason for the claimant to resign.

The Employment Appeals Tribunal has consistently held, and this Tribunal now holds, that, except in very limited circumstances, an employee must exhaust all avenues for dealing with his grievances before resigning. Therefore the claimant's claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

The Tribunal heard no evidence in relation to the claim under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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