

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD2016/2010

RP2737/2010

MN1960/2010

WT893/2010

against

EMPLOYER

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**  
**ORGANISATION OF WORKING TIME ACT, 1997**  
**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**  
**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. Meghen

Members: Mr. G. Andrews  
Mr. D. Mcevoy

heard this claim at Limerick on 16th July 2012, 26th September 2012 and 27th September 2012

Representation:

Claimant:

Mr Gearoid Howard, Crimmins Howard, Solicitors, Dolmen House, Shannon, Co Clare

Respondent:

O'Rourke Reid, Solicitors, Pepper Canister House, Mount Street Crescent, Dublin 2

### **Claimant's case:**

At the outset the claimant withdrew his claims under the Redundancy Payments Acts, 1967 to 2007 and the Organisation of Working Time Act, 1997. The claimant proceeded with his claims under the Unfair Dismissals Acts, 1977 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The claimant outlined a number of incidents of alleged bullying/harassment spanning approximately 18 months before the date of his resignation. He tried to contact HR Division and left a voice mail on one occasion and a message with a person on the other occasion but received no follow up on either calls. It was the accumulation of these incidents that led the claimant to conclude that he had no alternative but to resign and therefore he was claiming that he was constructively dismissed by the respondent. At the time of his resignation the claimant

was on sick leave and was asked by the respondent to attend a Doctor designated by the respondent in order to be independently assessed. The claimant resigned by letter dated 25<sup>th</sup> June 2010 and did not attend this doctor's appointment for 29<sup>th</sup> June 2010 as he did not trust the Doctor.

The claimant did not invoke the respondent's grievance procedure because he did not trust the respondent and had no faith that he would be treated fairly.

### **Respondent's case**

The respondent addressed each of the alleged incidents of bullying/harassment cited by the claimant and denied that these had taken place in the manner in which the claimant described.

The respondent held that the claimant had resigned of his own volition and that the first time they were aware of any possible grievance on behalf of the claimant was when he stated in his letter of resignation that he was resigning because of how he was treated by his managers. Notwithstanding this the respondent offered the claimant an opportunity to invoke the grievance procedure post his resignation letter but before his date of termination (as determined by the respondent). However the claimant declined this offer.

### **Determination**

Having carefully considered the evidence adduced at the hearing the Tribunal finds that the claimant was not unfairly dismissed from his employment with the respondent.

The claimant maintained that he resigned because of the way he was being treated by his managers. There was a clear grievance procedure contained within the employee handbook and the Tribunal are satisfied that the claimant was aware of this procedure. However he failed to invoke the respondent's grievance procedure in an effort to resolve his grievance and this was fatal to his case.

The Tribunal does not accept that the claimant's work environment was so bad that he had no alternative but to resign and his claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

As the claimant left of his own volition without giving notice to the respondent he has no entitlement to notice from the respondent and his claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)