

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - *claimant*

CASE NO.
UD1484/2011

against

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C. Corcoran B.L.

Members: Mr D. Moore
Mr. P. Woods

heard this claim at Dublin on 14th December 2012

Representation:

Claimant(s): Ms Michelle Cronin, Michelle Cronin & Co, Solicitors,
Kennedy Building, 24 Main Street, Tallaght Village, Dublin 24

Respondent(s): Mr. Paul Twoomey BL instructed by Ms. Janet Feane, Kate McMahon &
Associates, Solicitors, 223 The Capel Building, Mary's Abbey, Dublin 7

The determination of the Tribunal was as follows:-

The representative for the claimant outlined to the Tribunal that in a letter dated 24th June 2011 to the respondent she indicated that the respondent had acted in a manner which equated to constructive dismissal. In this letter she also indicated that the claimant had suffered bullying and harassment by the respondent which resulted in her suffering anxiety and depression. The claimant maintained that the date of dismissal was the 24th June 2011. In a letter to the respondent dated 22nd of July 2011 the claimant's representative requested the claimant's P45. Two TIAs were lodged with the Employment Appeals Tribunal which were signed on the 6th July 2011. Both the TIAs indicated that the claimant's employment ceased in 2011 but did not give the specific date. The claimant submitted medical certificates to her employer until January 2011 and she did not submit medical certificates after this date. Between January to June 2011 the claimant was under severe stress. A resignation was not a requirement for constructive dismissal.

Counsel for the respondent stated that the TIA lodged to the Employment Appeal Tribunal was lodged and dated stamped on the 8th July 2011. The date on the TIA was prior to the date of dismissal. By letter dated 10th August 2011 to the claimant's representative the claimant was informed that she was an employee of the respondent. If the claimant wished to terminate her employment she was asked to furnish a letter of resignation and once this letter was received the respondent would furnish the P45. The claimant purportedly resigned her position by letter dated 8th November 2011 but this letter was not received by the respondent. In subsequent correspondence to the respondent this letter of 8th November 2011 was not alluded to. A P45 was shown to the Tribunal which indicated that the claimant's last date of employment was the 22nd November 2012.

Preliminary Determination

By majority decision with Mr. Don Moore dissenting, the Tribunal find that it has no jurisdiction to hear the case having examined the submissions made by both parties and documents submitted and in particular the TIA and the fact that two different TIAs had the same crucial information missing. The Tribunal are not satisfied that the claimant discharged the onus of proof in relation to her claim for constructive dismissal and therefore her claim under the Unfair Dismissals Acts, 1977 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)