

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD1333/2011

MN1423/2011

RP1757/2011

Against

EMPLOYER

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney
Members: Mr. J. Hennessy
Mr. F. Dorgan

heard this claim at Thurles on 29th January 2013

Representation:

Claimant:

Mr. Blazej Nowak, Polish Consultancy Enterprise, 107 Amiens Street, Dublin 1

Respondent:

Mr Paul Malone, J. Brendan Quigley & Co., Solicitors, Borrisokane, Co. Tipperary

Claimant's case

At the outset the claimant withdrew his claims under the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The claimant contended that he had no alternative but to resign from his employment with the respondent and was therefore constructively dismissed.

The claimant commenced employment with the respondent on 21st July 2006 and was suspended without pay from 7th March 2011. A letter dated 14th March 2011 was issued to the claimant confirming that he was suspended without pay due to his gross misconduct and negligence. Subsequently on 21st March 2011 the claimant wrote to the respondent enquiring as to how long the suspension was to last and informing the respondent that it was his intention to

bring a claim under the Payment of Wages Act, 1991 in respect of the suspension without pay. This letter also stated that “failure to pay me wages may also result in a claim under the Unfair Dismissals Acts”. The claimant did not receive a reply to this letter and on 3rd May 2011 he wrote to the respondent stating “I hereby give you four weeks notice of termination of my employment with you (as required by section 12 of the Redundancy Payments Act”. This was the claimant’s resignation and he told the Tribunal that he resigned as he had no alternative but to do so.

The claimant told the Tribunal that he started his own car repair business in July or August 2010 and that the respondent knew about this. He also started a part-time job (three days per week), repairing lawn mowers, in May 2011.

Respondent’s case

The respondent is a primarily a truck repair business but also occasionally repairs cars. The respondent placed the claimant on suspension without pay after a car that the claimant worked on was returned to the garage having failed the NCT test because of what the respondent called being in a dangerous condition.

The intention of the respondent was to keep the claimant on suspension until such time as the claimant “got his act together” and the respondent did not dismiss the claimant. When he received the claimant’s letter of 3rd May 2011 the respondent viewed this as the claimant’s resignation and considered that he (the respondent) was not required to take any further action.

Determination

The premise of the claimant’s case was that he was suspended without pay indefinitely and that as a result of this he had no alternative but to resign and was therefore constructively dismissed by the respondent.

The Tribunal carefully considered the evidence adduced at the hearing and is not satisfied that the claimant was left with no alternative but to resign. Prior to, during and since his suspension the claimant operated his own car repair business and at the same time as the claimant tendered his resignation he also had obtained another part-time job.

In all the circumstances the Tribunal finds that the Claimant resigned of his own volition and was not dismissed, constructively or otherwise, by the employer. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)