

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD1665/2011

against  
EMPLOYER

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. S. McNally

Members: Mr. P. Casey

Mr. J. Flavin

heard this claim at Cork on 6th March 2013

Representation:

Claimant:

Ms Anne McShane, Martin A Harvey & Co, Solicitors,  
Parliament House, 9/10 Georges Quay, Cork

Respondent:

Ms. Sophie Crosbie , IBEC, Knockrea House, Douglas Road, Cork

### **Claimant's case.**

The claimant commenced employment with the respondent on 17<sup>th</sup> May 2004 as a general operative and continued to work there until he resigned on 26<sup>th</sup> May 2011. The claimant alleged that he was constructively dismissed as he was of the opinion that if he did not resign he was going to be dismissed.

A disciplinary meeting was held on 26<sup>th</sup> May 2011 with regard to an alleged breach, by the claimant, of the respondent's health and safety procedure. The claimant was present and accompanied by his union official at this meeting. At the outset the tone of the meeting led the claimant and his union official to believe that the claimant was going to be dismissed and they requested a recess and one was granted. During the short recess the claimant decided to request that he be allowed to resign instead of being dismissed, on condition that he would receive a written reference from the respondent. However the claimant only did so because he believed he was going to be dismissed. The respondent accepted the claimant's conditional offer to resign.

### **Respondent's case**

The respondent accepted that they intended to dismiss the claimant at the meeting of 26<sup>th</sup> May 2011. However before the decision could be communicated to the claimant he offered to resign on condition that he would receive a written reference. The respondent agreed to the claimant's condition and accepted his resignation.

Based on the above the respondent contended that the claimant resigned of his own volition on agreed terms.

### **Determination**

Having carefully considered the evidence adduced at the hearing the tribunal is satisfied that during the meeting of 26<sup>th</sup> of May 2011, the claimant and his representative were of the belief that dismissal by the respondent company was imminent. However the intention by the respondent company to dismiss the claimant had not yet been communicated and following a short recess of the meeting, the claimant's representative, on behalf of the claimant, made an offer of resignation on condition that the claimant would be given a reference by the respondent. The respondent company accepted this offer and agreed to the terms thereof.

The tribunal accepts that it is a principle of law, where an employee resigns because the employer has threatened that if he does not resign, he will be dismissed, such a resignation may be considered a dismissal, as it is the threat that causes the employee to resign. However, where terms of the resignation are agreed to the satisfaction of an employee, the threat of dismissal is no longer the operating factor in the decision of the employee to resign and the employee is willing to resign because he/she is offered terms that are satisfactory to him/her.

The tribunal is satisfied that the claimant in this case, resigned willingly as the terms of resignation were offered by/or on behalf of the claimant and accepted by the respondent company. Therefore, his claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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