

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE –**Claimant**

UD286/2012

against

WT127/2012

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 F. Cunneen
Mr M. O'Reilly

heard these claims at Dublin on 2 May 2013

Representation:

Claimant:

In person

Respondent:

The determination of the Tribunal was as follows:

This being a claim of constructive dismissal being it fell to the claimant to prove his case.

Determination:

The claimant was employed as a laboratory assistant in the respondent's photographic processing business from October 2006. While it was common case that the claimant received his statutory entitlements to annual leave in both 2008 and 2011 it was conceded that the claimant had not received those entitlements in 2010.

The claimant took issue with not having received those entitlements and when the respondent rebuffed his request for a pay rise the claimant felt that he had no option other than to leave the employment on 25 November 2011.

The Tribunal is satisfied that the claimant was so unreasonably treated in regard to his attempts to get the respondent to address the issues raised about annual leave as to justify his claim of constructive dismissal. The claimant found alternative work immediately and within three months

was earning more than he had been with the respondent. Accordingly, the Tribunal awards €400-00 under the Unfair Dismissals Acts, 1977 to 2007 as being just and equitable in all the circumstances.

The Organisation of Working Time Act provides at Section 25 a requirement for an employer to keep for three years, records to show that the provisions of the Act are being complied with. In the event of a dispute the onus lies with the employer. In this case the respondent was not in a position to meet the burden imposed on it in this regard. Accordingly, being conscious that the claim must, at its height, be limited to the eighteen months before the complaint, the Tribunal awards €750-00 for unpaid annual leave in the eighteen months before the complaint under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)