

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD1137/2011

MN1227/2011

against

EMPLOYER

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. F. Crawford B.L.

Members: Mr. T. O'Grady

Mr. F. Barry

heard this claim at Dublin on 2nd November 2012 and 12th March 2013

Representation:

Claimant:

Respondent:

Claimant's case

This was a claim for constructive dismissal. The claimant was summoned to a disciplinary meeting by the respondent. However there was no information given to the claimant in regard to what she was alleged to have done that merited a disciplinary hearing. Despite a number of letters being sent by the claimant's solicitor to the respondent no information was supplied to the claimant prior to a proposed disciplinary hearing. Therefore the claimant felt she was left with no option but to resign her position with the respondent and accordingly resigned with affect from 7th February 2011.

Respondent's case

The respondent contended that the claimant was to be given an opportunity to have a preliminary meeting prior to the disciplinary meeting. The purpose of this meeting would have been to provide details of the allegations being made against her. No meetings took place at all and the claimant resigned her position. Therefore the respondent held that the claimant resigned of her own volition and was not constructively dismissed.

Determination:

The Tribunal carefully considered the evidence adduced during the course of the two day hearing and the submissions made on behalf of the parties.

In assessing whether or not the Applicant in this matter was constructively dismissed, the Tribunal has assessed the evidence adduced and the related legislation in relation to Constructive Dismissal and in particular the test as set out in the Unfair Dismissal Acts. The onus of proof is on the Applicant to prove that she did not voluntarily resign from her employment and that the termination was due to the conduct of the Respondent, leaving the Applicant with no alternative or that it was reasonable for the Applicant to terminate the employment.

It is for the Tribunal to consider if the actions and behaviour of the Respondent were so unreasonable that it was reasonable to expect the Applicant not to tolerate the behaviour. The conduct of the Respondent is crucial.

In this case, the Claimant was not provided with full details of the allegations being made (with vouching documentation) prior to the Disciplinary Hearing which was planned for the 26th November 2010 save for the reason set out on the notification handed to the claimant dated the 23rd November 2010. It is deemed a most basic request when an employee is facing Disciplinary procedures that an employee be provided with any relevant documentation in advance, the documents supporting the allegation in the procurement of the Respondent and full details of the nature of the allegations being made before an investigation in order that the employee is both aware of the case being made against him/her and can respond fully to the allegations. These details were requested on several occasions before notification was given by the Claimant that she was resigning from the employment. The offer of a "preliminary meeting" in order to examine this documentation is not sufficient for procedural or natural justice and fairness.

Details of the disciplinary procedure and the bullying and harassment procedure were also not furnished despite repeated requests.

It is also noted that the claimant had made a complaint orally regarding bullying in the workplace which was not investigated by the Employer.

In all the circumstances, the Tribunal finds that the claimant was constructively dismissed from her employment and therefore her claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds.

The Claimant seeks compensation from her employer as set out in the T1A. For the purposes of the assessment of loss, Section 7(3) of the Unfair Dismissals Act (as amended) states that

"Financial loss in relation to the dismissal of an employee, includes any actual loss and any estimated prospective loss of income attributable to the dismissal and the value of any loss or diminution, attributable to the dismissal, of the rights of the employee under the Redundancy Payments Acts, 1967 to 1973, or in relation to superannuation,"

In this case, the Tribunal heard evidence that the Claimant had required medical attention immediately after being provided with notification of the disciplinary hearing scheduled for the 26th November 2010. The Claimant provided Doctor Certificates to the Respondent after this initial attendance. The Tribunal was also informed that the medical intervention has continued

and that the Claimant has been on medication and has been unwell with stress, depression and a loss of self-esteem after the action of the Respondent following 13 years of employment. Therefore, the Claimant has been unfit for work by reason of illness which was attributed wholly to the factors which lead to her resigning her employment.

In assessing the amount of compensation, the Tribunal has taken all factors into account and has had regard to the provisions of Section 7 of the 1977 Act as amended including, *inter alia*, Section 7(2)(a) which states that

- (a) The extent (if any) to which the financial loss referred to in that subsection was attributable to an act, omission or conduct by or on behalf of the employer.

Taking all circumstances into consideration, the Tribunal awards the Claimant the sum of €55,000.00.

There was a claim under the heading of the Minimum Notice and Terms of Employment Acts 1973 to 2005 indicated on the T1A form but this was not proceeded with at the hearing. In any event, as this is a case of constructive dismissal, the claimant is not entitled to notice. The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 is dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)