

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD65/2013  
MN1802/2011  
WT695/2011

against  
EMPLOYER

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**  
**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony B.L.  
Members: Mr. D. Hegarty  
Mr. D. McEvoy

heard this claim at Cork on 10th April 2013

Representation:

Claimant:

Respondent:

No appearance by or on behalf of the respondent.

### **Respondent's case**

There was no appearance by or on behalf of the respondent.

### **Claimant's case**

The claimant's representative told the Tribunal that the respondent is in administration in the U.K. and that this is insolvency according to Section 247 of the 1986 Insolvency Act, (UK).

The claimant commenced employment as Regional Manager for Ireland with the respondent on 14<sup>th</sup> January 2008. Towards the end of 2010 business was slowing down and the claimant was tasked with reducing the number of staff employed. He was given a list of staff by the Human Resource Department and told that these people had to go. Some of these were invited to disciplinary meetings and told they were dismissed on the basis of unsatisfactory performance.

The claimant himself was called to a disciplinary meeting scheduled for 21<sup>st</sup> June 2011. On the Friday prior to this meeting the claimant received a phone call from "the third in

ommand”(TIC) of the respondent who advised the claimant not to attend the meeting but to resign instead. TIC said that the meeting would not be good for the claimant. Subsequent to this phonecall the claimant phoned another director of the respondent who told him that he (the claimant) had sent an e-mail that he should not have sent and that he should resign or be dismissed for gross misconduct. This e-mail related to sales figures, which he was entitled to send to the recipient as an employee. This director also told the claimant that the fact of his dismissal for gross misconduct would be included in any reference given by the respondent.

On the 21<sup>st</sup> June 2011 the claimant did attend the disciplinary hearing and resigned his position with the respondent. However it is the contention of the claimant that he did so under duress and to avoid the predetermined dismissal for gross misconduct. The claimant felt he was left with no option but to resign and therefore contended that he was constructively dismissed by the respondent.

Subsequently on the 12<sup>th</sup> August 2011 the claimant sent an e-mail to the respondent seeking to retract his resignation but received no reply other than his P45 in the post. At the date of termination of employment the claimant was earning €1,442.30 gross per week.

### **Determination**

The Tribunal is satisfied that the respondent was properly notified of the hearing. As this is a case of constructive dismissal the onus of proof rests on the claimant.

Based on the uncontroverted evidence of the claimant the Tribunal is satisfied that the employer’s unreasonable behaviour justified the claimant’s resigning and claiming constructive dismissal. Accordingly, the claim under the Acts succeeds. Having heard evidence of loss the Tribunal awards the claimant the sum of €123,000.00 as compensation under the Unfair Dismissals Acts, 1977 to 2007.

As this was a case of constructive dismissal and the claimant left his employment without giving notice to the respondent he can have no entitlement to receive payment in lieu of notice from the respondent. Accordingly the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails.

No evidence was adduced in respect of the claim under the Organisation of Working Time Act, 1997 and therefore that claim is dismissed for want of prosecution.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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