

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD1764/2011

WT698/2011

MN1813/2011

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 D. Donovan B.L.

Members: Mr J. Browne
Mr F. Dorgan

heard this claim at Waterford on 24th April 2013

Representation:

Claimant:

Respondent:

Claimant's case

As this was a claim for constructive unfair dismissal the claimant bore the burden of proof and accordingly went into evidence first.

The respondent is a chicken processing and packaging plant and the claimant was employed there from 6th October 2008 until her employment terminated on 2nd June 2011. The claimant was paid to 9th September 2011 and told the Tribunal that even though her last full day of employment with the respondent was 2nd June 2011 she was due a total of 490 hours leave in lieu of unpaid over-time. Accordingly, the claimant contended that the period from 3rd June 2011 to 9th September 2011 was time off in lieu of over-time.

Initially the claimant was employed as a General Operative but was promoted to Supervisor in May 2010. The claimant was Supervisor of one particular packaging line almost exclusively

from the time of her promotion until the 2nd June 2011.

On the 2nd June 2011 a packaging machine on the claimant's line broke down and she paged the Production Manager (JM) to come and have it fixed. JM did not arrive until forty minutes later and in the meantime the Agricultural Officer told the claimant to get the product off the ground. The claimant pointed out to JM that he had taken forty minutes to arrive and told him that she would be better off at home. It was the claimant's evidence that in response to this JM, using coarse language, told her to go "off home then". The claimant asked JM was he sure about this and he repeated the same thing three times.

Based on this instruction from JM the claimant left the factory but before doing so she attempted to meet with a director of the respondent. However this director (Mr. H) was not available to talk to her at that time. All in all from the moment of the incident with JM to when the claimant left the premises it took about 20 minutes. During these 20 minutes nobody, including JM, approached her.

Later on the 2nd June 2011 the claimant sought legal advice and the advice she received was to return to work the following day. Therefore the claimant returned to work at 7:30am the following day and met with JM at about 8:30am. JM then told her that she was to go to work on a different line in a General Operative capacity and that he had given her job to another employee. The claimant then clocked out and left. Later that same day the claimant received a phone call from JM and she put it on loudspeaker so that her friend (AS), could hear the conversation. During this conversation JM asked the claimant to give him a letter stating that she had resigned but she refused to do this as she had not resigned. AS told the Tribunal that he was with the claimant during this phone call and that JM had asked the claimant for a written resignation but that the claimant refused, saying that she had not resigned.

During the weeks that followed the claimant sought to meet with Mr. H and a meeting took place on 27th July 2011. Present at this meeting was Mr. T and a Secretary but the Secretary left when AS arrived to act as observer and note taker. During this meeting Mr. H suggested to the claimant that, as he did not know what to do with the employee who had replaced her, the claimant should come back to work as Assistant Manager. However, subsequent to this meeting, Mr. H denied that he had ever made such a suggestion.

The claimant wanted to return to work but would not do so unless she was to return to the supervisory role she had before she left. There was a breakdown in trust between herself and the respondent and the claimant contended that she could not return to work and therefore was constructively dismissed.

Respondent case

JM was the only witness for the respondent. He denied telling the claimant to go off home in the words quoted by the claimant but did use coarse words to tell her to go off home but only once during the incident that led to the claimant leaving work. As the claimant was leaving her station JM asked her not to do anything rash but she still left.

When JM approached the claimant the following morning he asked her to go, as a filleter, to a different line to the one she normally supervised. JM had already assigned somebody else to the claimant's position. A letter was sent by the respondent to the claimant on 7th June 2011 and JM told the Tribunal that what was meant by this letter was that they did not want the claimant on

the line she had been on. However it was not necessarily intended that this would be a permanent move. It was also intended to keep the claimant on the same rate of pay as she was already on.

JM left the respondent company in July 2011 and had no further involvement in this matter.

Determination

Having considered the evidence adduced at the hearing the Tribunal finds that when JM for the respondent told the claimant on the 2nd June 2011 to go he intended her to act on it and she did.

The Tribunal finds that this action by JM was unfair and unreasonable in circumstances where the claimant was only concerned about what was happening to the respondent's product as a result of the breakdown of the conveyor belt.

The claimant on reflection returned to work the next day and but for the actions of the respondent in removing the claimant's supervisor status and moving her to work in a different area that would have been the end of the matter from the claimant's position.

The Tribunal finds that by the time the claimant was made aware that her salary would remain at supervisor level she had already left and the duty of trust and confidence between the claimant and the respondent had irretrievably broken down.

The Tribunal finds that there was conduct such as entitled the claimant to consider herself constructively dismissed. Accordingly, the claim under the *Unfair Dismissals Acts 1977 to 2007* succeeds and the Tribunal awards the claimant compensation in the amount of €9,500.00 over and above the amount paid to the claimant from the date of termination up to 9th September 2011 which the Tribunal finds was pay in lieu of time off for overtime worked by the claimant.

The Tribunal finds that the claimant is entitled to 8 days holidays and awards the claimant an amount of €704.00 under the *Organisation of Working Time Act 1997*.

As the Tribunal finds that the dismissal was a constructive dismissal the claimant is not entitled to notice and accordingly the claim under the *Minimum Notice Act 1973* fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)