

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

Employee  
–**Claimant**

UD1536/2008  
RP1383/2008  
MN1476/2008  
WT623/2008

against

Employer - **Respondent**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1967 TO 2001**  
**ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. G. McAuliffe  
Mr. P. Woods

heard this appeal at Dublin on 13 May 2009

**Representation:**

Claimant: In person

Respondent:  
XXXX Operations Director of the respondent

The determination of the Tribunal was as follows:

The claimant was employed from February 2000 as a general operative. The employment was uneventful until June 2003 when the claimant was diagnosed with a serious eye condition. This condition caused him to be absent from work for in excess of 100 days over the next four years. On 15 August 2007 the claimant was issued with a final written warning following an incident concerning the sending of threatening and abusive text messages to another member of staff and of verbally threatening the same member of staff. Following the issuing of the final written warning the claimant never again attended for work but was on a continuing series of medical certificates commencing on 16 August 2007.

On 1 October 2007 the human resource manager (HR) wrote to the claimant to ask him to contact one of HR, the operations director (OD) or the claimant's departmental manager (DM) to discuss the possibility of his returning to work in the near future. Whilst there was no response from the claimant and the letter was repeated on 5 November 2007 and again on 12 December 2007 HR

made contact with the claimant by telephone and obtained the claimant's consent for HR to speak to the claimant's GP. It is the respondent's position that when HR contacted GP, GP said he felt the claimant would be unable ever to return to work. Following the letter of 12 December 2007 the claimant attended at the respondent's premises some time in the week before Christmas 2007 and met OD and HR. It is common case that this meeting was not amicable, indeed the claimant's position is that he was threatened by OD before HR arrived at the meeting. The respondent denies this. At the pre Christmas meeting the claimant told both OD and HR that he had an appointment in January 2008 at the Eye and Ear Hospital. Following his visit to the hospital the claimant furnished the respondent with a medical certificate dated 24 January 2008, which states that the claimant is "unable to follow his employment".

HR having again spoken to GP in May 2008 DM then wrote to the claimant on 27 May 2008 to seek a meeting to discuss an amicable conclusion to the situation. The claimant replied in a letter of 3 June 2008 in which he stated "My Doctor feels that I will never be fit to resume work; well I hope to be fit to return to work when I am in good health". DM then wrote to the claimant on 8 August 2008 in which the claimant was told that the respondent could no longer keep a position open for the claimant as it was a year since he had last worked and GP had said that the claimant would never be fit to return to work. The claimant received no notice of the intention to dismiss him on 8 August 2008.

**Determination:**

While best practice would suggest that a more prudent course of action for the respondent would have been to arrange for the claimant to be examined by a doctor on their behalf the Tribunal is satisfied that, in this case, it was reasonable for the respondent to conclude that the claimant would never be able to return to work in circumstances where GP's opinion expressed in telephone conversations with HR had been confirmed in the claimant's letter of 3 June 2008. Accordingly the Tribunal finds that the dismissal was not unfair and the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail. In circumstances where the dismissal is found to arise from the inability of the claimant to fulfil his duties a claim under the Redundancy Payments Acts, 1967 to 2007 cannot arise. Accordingly the claim under those Acts must also fail. Loss having been established, the Tribunal awards €1640-00, being four weeks' pay under the Minimum Notice and Terms of Employment Acts, 1967 to 2001. No evidence having been adduced the claim under the Organisation of Working Time Act, 1997 fails for want of prosecution

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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