

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

- claimant

UD1307/10

RP1776/10

MN1263/10

Against

EMPLOYER

- respondent

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr P. Pierce
Mr S. Mackell

heard this claim at Naas on 14th December 2011.

Representation:

Claimant: Ms Julienne Paye, Richard Grogan & Associates,
Solicitors, 16 & 17 College Green, Dublin 2

Respondent: In person

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant was employed as a carpenter and commenced employment on 21st January 2005. The respondent (RB) suggested to the claimant that he apply for family support income. RB enquired from him at a later stage if he was receipt of the family support income and the claimant told him that both he and his wife were in receipt of such payment then RB became most annoyed with him.

The claimant encountered difficulties with his pay cheques. The Bank constantly returned the cheques to him and he had to speak to RB regularly about these. His wages would eventually be paid. Because of this he refused to take a pay cut in his wages. If RB reimbursed him monies

owed to him he contended that he would consider starting afresh. The claimant was offered work in Co. Limerick but refused this work as he was still owed money from RB and he was afraid he might not be paid again.

The claimant has not worked since he left his employment.

Respondent's Case:

Two employees worked for the respondent, the claimant, a carpenter being one of them. Due to the economic downturn in July 2009 the respondent (RB) had to reduce their hours but there was always a full week's work available. RB had cash flow problems and he had to borrow to meet the wages. If the employees' wage cheques bounced he always reimbursed them in cash. Sometimes the employees had to wait several days after their pay date to be paid. They at all times received their wages.

In November 2009 the claimant sought permission to apply for a family income supplement and RB agreed to this. In the meantime the claimant continued to work full time for the respondent.

In February 2010 RB enquired if the claimant had received the family income support and if his wife was also in receipt of same. The claimant became furious and accused RB of hassling him. He immediately went to his car removed his tools and returned them and left. Later on the claimant texted RB and said he had been injured and was on sick leave. During the claimant's absence on sick leave RB texted him and offered him his job back at €500.00 net per week. RB did not make the claimant redundant. As the claimant was still owed three weeks holiday pay RB telephoned him in July 2010 as he wished to pay him but he received no response from the claimant.

Determination:

The Tribunal carefully considered the evidence adduced during the course of this hearing.

The claimant is alleging he was constructively dismissed from his employment with the respondent company. Section 1 of the Unfair Dismissal Act defines constructive dismissal as:

“ the termination by the employee of his contract of employment with this employer whether prior notice of the termination was or was not given to the employer in the circumstances in which, because of the conduct of the employer the employee was or would have been entitled or it was or would have been reasonable for the employee to terminate the contract of employment without giving prior notice of the termination to the employer”.

The burden of proof, which is a very high one, lies with the claimant. He must show that his resignation was not voluntary. The legal test to be applied is “an and or test”. Firstly, the Tribunal must look at the contract of employment and establish whether or not there has been a significant breach going to the root of the contract. If the Tribunal is not satisfied that there has been a significant breach of the contract it can examine the conduct of both the employee and employer together with all the circumstances surrounding the termination to establish whether or not the decision of the employee to terminate the contract was a reasonable one.

The claimant admitted when questioned by the Tribunal that he was paid every week albeit many of the payments were late by approximately one week or less. The respondent explained the financial situation to the claimant and the Tribunal finds that the claimant was aware that the respondent was struggling financially. The claimant was not happy about the late payments but he did accept them.

Taking all of the facts into account the Tribunal finds that the claimant's contract was not breached and it was not reasonable for him to terminate his own employment. The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

The claims under the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)