

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE - *claimant*  
RP2562/2011

CASE NO.  
  
UD1985/2011

against  
EMPLOYER - *respondent*

under

### 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 M. Carr  
Ms. E. Brezina

heard this claim at Dublin on 2nd July 2013

Representation:  
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Claimant(s) : Mr Michael Kinsley BL instructed by Mr Marcin Szulc, Philip Hannon  
Solicitors, The Capel Building, Suite 143, Mary's Abbey, Dublin 7

Respondent(s) : Director of respondent company

### Determination

The claimant was employed by the respondent construction company from 2000. He was absent from work on sick leave from June 2008 and submitted regular medical certificates for his absence. A medical report of June 2008 from the company doctor sets out the claimant's medical problems. Evidence was given by (SH) for the respondent company that the claimant refused to avail of operative intervention to improve his medical problems in 2008. It would appear that in 2009 the claimant did avail of that operative intervention.

A letter from Social Welfare was produced dated 16 November 2010 stating that the claimant was capable of working. In January 2011 the company doctor certified the claimant fit to return to work. (SH) stated that following a phone call to the company doctor he decided that the claimant needed to be assessed by an occupational therapist. He stated that the company doctor suggested it. He stated that he needed to be satisfied for insurance purposes that the claimant

was physically fit to carry out his employment duties. The Tribunal finds that (SH) is correct in that regard. He requested the claimant to attend an occupational therapist. The claimant refused. He asked the claimant by way of letter dated 15 February 2011 to show that he was resident in the state and was available for work. The letter further stated “you must also demonstrate that there is no medical impediment to the resumption of your former employment. This will require confirmation from our delegated occupational therapist or a specialist of your choosing...”. The Tribunal also notes that it is stated in the claimant’s contract of employment that “the company reserves the right to have you examined by a medical practitioner at any time”. The claimant did not attend with an occupational therapist or any specialist of his choosing and he did not produce any independent medical evidence as to his fitness to return to his specific employment.

In the course of the hearing, recordings of phone conversations between the claimant and (SH) were played to the Tribunal. During the phone call evidence the claimant did ask (SH) “whatabout me, what about work”. It was open to the claimant to attend with the specialist in order to satisfy the respondent that he was fit to return to work and for reasons we will never know here refused/neglected to do so.

The Tribunal finds that the claimant, by refusing/neglecting to produce specialist evidence or to allow specialist evidence to be produced frustrated his contract of employment. Accordingly the claims under the Unfair Dismissals Acts 1977 to 2007 and the Redundancy Payments Acts 1967 to 2007 fail and are hereby dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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