

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

UD967/2006

against

MN631/2006

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Fahy B.L.

Members: Mr. B. O'Carroll
Ms. H. Henry

heard this appeal at Galway on 29 November 2007

Representation:

Appellant:

Mr. Paul McGettigan B.L. instructed by Ms. Breege McCaffrey,
D. M. O'Connor & Co. Solicitors, Cross Street, Galway

Respondent:

Ms. Ruth Mylotte B.L. instructed by Mr. Michael Finnegan,
Steen O'Reilly Solicitors, 31/34 Trimgate Street, Navan, Co. Meath

The determination of the Tribunal was as follows:

The claimant was employed in the respondent's concrete slab production facility from the spring of 2001. Initially the claimant was an operative but in 2003 was promoted to the position of foreman, a position in which he succeeded his brother who had also been promoted. At the outset the respondent conceded that claimant had been unfairly dismissed, the Tribunal was required to determine the loss in this case.

The respondent's position is that, since the dismissal, the claimant has not been available for work and therefore can have no loss attributable to the dismissal. The claimant's position is that the claimant's treatment by the respondent, during the period of his employment from the time he was promoted to the position of foreman, has contributed to the claimant's condition.

Determination:

The Tribunal having carefully considered all the evidence of the claimant and the respondent is satisfied that the claimant made the respondent aware of the claimant's depressive illness. The respondent placed more responsibility on the claimant by offering him the role of foreman in a busy and expanding company notwithstanding that it was aware of his illness. The Tribunal is further satisfied that while the respondent took steps to assist the claimant by recruiting additional employees these fell far short of a genuine effort to assist the claimant with the increasing level of stress that resulted from the increased demands on him. The respondent failed to provide any training or in-service course to assist the claimant when promoting him to the position of foreman notwithstanding that his previous role within the respondent company was that of a general operative. The respondent having conceded that the claimant was unfairly dismissed the Tribunal awards € 35,000 for the unfair dismissal and the continued stress related illness under the Unfair Dismissals Acts, 1977 to 2001. In reaching its determination the Tribunal has considered both *Allen-v-Independent Newspapers (Ireland) Limited – UD 641/2000* and *Walker-v-Northumberland County Council – [1995] ALL E.R. T37*

The Tribunal further awards €3,690-38, being four weeks' pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2001

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)