

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

3 Employees

UD671/2006

UD672/2006

UD673/2006

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. P. Pierce
Ms. M. Maher

heard this claim at Dublin on 9th February 2007
and 17th April 2007

Representation:

Claimant:

Mr. Eddie Farrelly BL instructed by Mr. Andrew Butler,
Hayes McGrath, Solicitors, 91 Lower Baggot Street, Dublin 2

Respondent:

XXXX

The determination of the Tribunal was as follows:

Background:

The Claimants took up an apprenticeship with the company. The company say that the dates that count are the dates that the FAS apprenticeship spanned. The claimants contend that they should have been dismissed within a month of the actual apprenticeship ending.

Preliminary point:

The Claimants contend that they were dismissed after their apprenticeship ended. They also contend that the dismissal took place more than one month after their apprenticeship ended and therefore this allows them to bring a claim under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal determined to hear the evidence of the Claimants as the onus was on them.

Claimants' case:

The Tribunal heard evidence from the first named employee.

He began working with the respondent on 01st July 1997 as a general worker under a temporary six-month contract. When the six-month contract expired he was employed on successive yearly contracts. In September 2001 he began an apprenticeship with the respondent. The commencement date of the apprenticeship began on 03rd September 2001. The witness told the Tribunal that his registration for the apprenticeship was in December 2001, "I think the eighteenth". The apprenticeship was divided into seven phases. Phases two, four and six were off the job college training. Phases one, three, five and seven were on the job phases or in Portlaoise training. Circa one hundred or one hundred and ten apprenticeships commence.

He and his colleagues who were also on an apprenticeship were led to believe that they would be retained after the apprenticeship ended. Specifically a Mr. Mc C told them that the respondent company would "keep us on".

He and his colleagues were informed that they were being let-go by letter dated 27th September 2005. This letter was opened to the Tribunal. When they received the letter they had a meeting with their Trade Union. Their Union told them that there was a "good chance" that they would not be let-go. Their Union put them in touch with solicitors. They were seeking their jobs back. They were led to believe from the outset of their apprenticeship that the respondent would keep them and this was up until they were let-go. Of the one hundred and ten apprentices about half were kept on with the respondent or were re-employed.

The Tribunal heard evidence as to the claimant's loss and mitigation of loss.

In cross-examination the claimant agreed that there was a series of contracts up until 2001. He agreed that after this the company made it clear that it was not going to engage general operatives. He agreed that there was an agreement with the Union to wind down the positions and that some of the general operatives were offered full time positions and some offered an apprenticeship. Those who were not willing to take an apprenticeship or were not able were let-go on the grounds of redundancy.

The third named claimant in his evidence told the Tribunal of a telephone call in October/November 2005 from a supervisor offering him money to leave. He also gave evidence as to loss.

In cross-examination witness said that he was not aware of the agreement negotiated between the union and the respondent. In relation to his invitation to a second interview with the respondent in 2006 he said his reason for not attending was that he could not make it and he did not want to be let

down.

Evidence was also given by another apprentice in relation to a meeting in Cork in 2002 attended by the networks manager. The claimants were not present. When a question was asked by another apprentice as to whether they would continue in their jobs after the apprenticeship ended he told that yes provided there were no safety issues.

The second named claimant also gave evidence as to loss.

In cross-examination he said he was led to believe that he would be given a permanent job following the completion of his apprenticeship. He and his colleagues would not have participated in the apprenticeship had they known that they would not get permanent jobs.

Respondent's case:

The representative for the respondent opened the document outlining the agreement to the Tribunal.

The witness agreed that there was nothing in writing that they would be retained but that they "were led to believe".

The manager of apprenticeship services confirmed that in the majority of trades the apprenticeship period is a minimum of four years from the date of registration with FAS. The apprenticeship consists of seven cycles alternating between on-the-job and off-the-job training. Further Education and Training and Award Council (FETAC) awards the National Craft Certificate to the successful apprentice. In the case of the three claimants the date upon which FAS registered the apprenticeship was as follows:

The first claimant:	18 th December 2001
The second claimant:	20 th December 2001
The third claimant:	19 th December 2001

Under the Industrial Training Act 1967 the responsibility lies with the respondent to register an apprentice with FAS within two weeks however to the best of his knowledge those who do not comply are not prosecuted. FAS do not register retrospectively.

In cross-examination witness said that in the period between starting with the respondent and being registered with FAS the employee would be deemed to be an employee rather than an apprentice. An employee is not deemed an apprentice until he is formally registered with FAS.

Two other witnesses, the industrial relations manager gave evidence of no guarantee by the respondent of jobs for apprentices after 2000 and the apprentice co-ordinator met with the apprentices and told them that he could not envisage there being jobs for everybody.

Determination:

The Claimants' official apprenticeship did not commence until the date specified in the official apprenticeship form that had been signed by each of the new apprentices. Each therefore knew when their apprenticeship began and when it would officially end. This is a Statutory Apprenticeship which is covered by Section 2 of the Unfair Dismissals Act. The Respondent dismissed the Claimants within one month of the Claimants' apprenticeship ending. Accordingly,

their claims under the Unfair Dismissals Acts, 1977 to 2001, must fail.

The verbal assurances given by members of management at the time of the agreement to offer apprenticeships to the Claimants were a type of puffin statement and were not specific enough to constitute a clause of the apprenticeship contract that the claimants could rely on.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)