

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employer

UD313/2006

against the recommendation of the Rights Commissioner **UD35114/05/MR**
in the case of

Employee

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony B.L.

Members Mr. G. Phelan
Dr. A. Clune

heard this appeal at Limerick on 21 June and 10 September 2007

Representation:

Appellant:

Mr. Tom Mallon B.L. instructed by Mr. Séamus Given
on the first day, Mr. D. O'Dwyer on the second day,
both of Arthur Cox, Solicitors, Earlsfort Centre, Earlsfort Terrace, Dublin 2

Respondent:

Mr. Ger Kennedy, SIPTU, 4 Church Street,
St. John's Square, Limerick

This case came before the Tribunal as a result of an appeal by the employer (the appellant) against a recommendation of the Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2001, **UD35114/05/MR**, in the case of the employee, employee (the respondent).

The determination of the Tribunal was as follows: -

The employee was employed from February 1993 as a general operator and from mid 1993 as a production line operator (PLO) in the ready to feed (RTF) plant. The employment was uneventful until 25 February 2000 when the employee, who is right-handed, sustained crush injuries to three fingers on her right hand in an industrial accident. The employee was in receipt of full sick pay from the employer from the time of the injury until December 2002. The employee took a personal injury case against the employer and, following evidence that the employee would be unable to resume her work as PLO, reached a financial settlement with the employer in February 2003.

The employer's position was that the employment had been terminated when the employee

accepted the settlement, which had included a substantial element in respect of future loss of earnings, having had minimal loss of earnings before the settlement date, as it was clear that the employee would never work for the employer again. The employee's contract of employment had been terminated by reason of frustration based on her injury. The settlement of the legal case had, as an implied term, the effect of ending her employment with the employer. By way of a preliminary point the employer submitted that as the employment ended in February 2003 then the claim for unfair dismissal, received by the Rights Commissioner service on 29 June 2005, had been submitted outside the six month period allowed under the legislation.

The employee's position was that there was no such implied term in the settlement of February 2003. The employee had been offered a position with the employer as an outside attendant on line 4 (OA4) on 13 February 2004 and, following a letter from the employee's solicitor dated 10 December 2004 asking the employer to allow the employee to take up the position offered in February 2004, the employer wrote to her solicitors on 23 December 2004 to say that there was no employment for the employee as she had been fully compensated in the settlement reached in February 2003 to include loss of future employment. The employee's solicitor received this letter on 4 January 2005. The employee's position was further that she had been fit to resume work in the position as OA4 from February 2006, having submitted a medical certificate of fitness from her GP to the employer at that time. The employee was unable to assist the Tribunal with any detail about the disability benefit she had received during her period of disability. The employee had made no attempt to find alternative work after receiving the medical certificate of fitness to work in February 2006.

Determination

The employee was offered an alternative position on 13 February 2004. This is not consistent with employment having been terminated twelve months previously. She was also included in a list of possible candidates for voluntary redundancy. The Tribunal is satisfied that dismissal was effected by the letter of 23 December 2004. That letter being received by the employee's solicitor on 4 January 2005 the Tribunal finds that 4 January 2005 was the date of dismissal. Accordingly the claim of unfair dismissal lodged on 29 June 2005 was within the six-month period allowed under the legislation.

Having considered all the facts in this case it is clear that the employee was dismissed without any, or fair, procedures and in those circumstances it must follow that the dismissal was unfair. The Tribunal notes that the employee was seeking reinstatement, however there is a requirement under the legislation for the employee to mitigate her loss. Her evidence was that she had made no attempt to seek alternative employment. The Tribunal awards €1,520-00, being four weeks' pay, under the Unfair Dismissals Acts, 1977 To 2001

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)