

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee

UD578/2006

RP303/2006

MN375/2006

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001 REDUNDANCY PAYMENTS ACTS, 1967 TO 2003 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. M. Gilvarry

Members: Mr. D. Morrison
Mr. G. Hunter

heard this appeal at Letterkenny on 10 July and 10 October 2007

Representation:

Appellant:

Ms. Nodlaig Brolly B.L. instructed by
Mr. Donough Cleary, Cleary & Co. Solicitors,
The Diamond, Raphoe, Co. Donegal

Respondent:

XXXX

The determination of the Tribunal was as follows:

The claimant was employed as a temporary general worker from July 1998 on a series of fixed-term contracts. The claimant applied for an apprenticeship with the respondent in January 1999. His initial application was unsuccessful but on a subsequent occasion the claimant was successful and on 28 September 2001 accepted the respondent's offer of an electrical apprenticeship as a network technician. His apprenticeship was registered with FAS on 10 December 2001. A statutory apprenticeship is for a minimum period of four years from the date of registration with FAS. The claimant successfully completed his period of apprenticeship in that four-year period.

The respondent had taken on in excess of one hundred apprentices in the claimant's cohort in 2001. For business reasons the respondent was able to offer positions as network technicians to approximately half of the cohort. Those apprentices who had previously been permanent employees

of the respondent were guaranteed positions as network technicians on completion of their apprenticeships. The respondent conducted an interview process amongst the remainder of the cohort of apprentices and the claimant was advised in a letter of 27 September 2005 that he had been unsuccessful in his application. This letter further gave notice of the cessation of his apprenticeship with the respondent on 19 December 2005. The claimant left the employment at that time.

For a number of years, up to and including the previous cohort, there had been a guarantee of remaining with the respondent on completion of an apprenticeship. The apprentice handbook for 2001 states that “Existing staff members who successfully complete their apprenticeship course will be employed as E/I technicians, network technicians or fitters in their region or station” The claimant’s position was that this meant he was entitled to a permanent position on completion of his apprenticeship. The respondent’s position was that term “existing staff members” meant permanent employees prior to their apprenticeship. The respondent was unable to refute the claimant’s assertion that, as his planned induction day as an apprentice was cancelled due to the national day of mourning in September 2001, he had not been made aware of the respondent/union agreement which makes it clear that the offer of permanency to newly qualified apprentices ended with the cohort which commenced apprenticeships in 2000.

Determination:

Section 4 of the Unfair Dismissals Acts, 1977 to 2001 provides that *.....This Act shall not apply in relation to the dismissal of a person who is or was employed under a statutory apprenticeship if the dismissal takes place within 6 months after the commencement of the apprenticeship or within 1 month after the completion of the apprenticeship.* The Tribunal is satisfied that the claimant’s employment ended on 19 December 2005 and that this was within one month of the date on which his apprenticeship officially ended. In those circumstances the claim under the Unfair Dismissals Acts, 1977 to 2001 must fail.

Section 7 (4) of the Redundancy Payments Acts, 1967 to 2003 provides that *.....Notwithstanding any other provision of this Act, where an employee who has been serving a period of apprenticeship training with an employer under an apprenticeship agreement is dismissed within one month after the end of that period, that employee shall not, by reason of that dismissal, be entitled to redundancy payment.* In the same circumstances as above the claim under Redundancy Payments Acts, 1967 to 2003 must fail.

The evidence having shown that the claimant was given in excess of the required statutory notice period the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 must fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)