

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

UD898/2006

against

MN598/2006

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: Ms. E. Daly B.L.

Members: Mr. D. Winston
Mr. G. Lamon

heard this claim at Dublin on 18 June and 4 October 2007

Representation:

Claimant: Mr. David McCarroll, O'Mara Geraghty McCourt, Solicitors,
51 Northumberland Road, Dublin 4

Respondent: Mr Joe Bolger, E.S.A, The Novum Building,
Clonshaugh Industrial Estate, Coolock, Dublin 17

The determination of the Tribunal was as follows:

Issue:

A preliminary point has been raised by the Respondent, which is that the Tribunal has no jurisdiction because there is not one year's continuous employment of the Claimant.

Facts:

It is common case that the claimant met the principal (TP) of the respondent some time in mid February 2005. The two of them met again a week later and on 24 February 2005 the claimant began to do some work on models for a competition. TP and two others worked in the respondent company; all three of them are architects.

The respondent's position is that there was no contract of employment at this stage, merely a casual

relationship. The claimant's position is that there was a contract of employment agreed with TP from 23 February 2005.

On 1 March 2005 the claimant went to Germany and returned after ten or eleven days. The respondent's position is that following the claimant's return from Germany they reached an understanding that the claimant was to be an employee, on probation, from 1 April 2005, with a written contract from June 2005. TP furnished the claimant with a letter on 28 February 2005 in which he described the claimant as an employee.

The respondent's position is that this letter was merely for the purpose of assisting the claimant in regard to both German social welfare and opening a bank account- and did not reflect the true position, which was that the Claimant was on probation whether or not this had been expressed at that stage.

By November 2005 the respondent had become unhappy with the claimant's performance. On 27 February 2006 TP gave one month's contractual notice of termination to the claimant who immediately went out sick and was not paid any notice. The respondent's case is that, as the claimant was not employed until 1 April 2005, he did not have the requisite one-year's service in order to make a claim under the Unfair Dismissals Acts.

Determination:

The Tribunal is not satisfied that the parties agreed on a contract of employment on or before the claimant began to work on the model on 24th February 2005. The Tribunal finds the Claimant's contention, that the contract commenced immediately on the meeting, to be improbable; rather the Tribunal further finds that the claimant's contract of employment probably commenced in or around 1st April 2005 following the establishment of a more formal relationship between the parties. It follows that, the claimant having been given notice of dismissal on 27th February 2006 with one month's contractual notice, the date of dismissal for the purposes of the Unfair Dismissals Acts is 27 March 2006. Accordingly the Tribunal finds that the claimant did not have one-year's service and the claim under the Unfair Dismissals Acts, 1977 To 2001 must fail.

The claim under the Minimum Notice and Terms Of Employment Acts, 1973 to 2001, succeeds and the Tribunal awards the sum of €615-00, being one week's pay.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)