

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD603/2006

Against

Employer

Under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. M. Gilvarry

Members: Mr. D. Morrison  
Ms. R. Kerrigan

heard this claim at Letterkenny on 9 July  
and 8 and 9 October 2007

Representation:

Claimant:

Mr. Patrick J. Keane, Regional Secretary,  
T.E.E.U, Forster Court, Galway

Respondent:

Employee Relations Manager,

The determination of the Tribunal was as follows: -

The claimant, who had been on disability benefit, was employed from 13 September 1999 under a plan to assist people with disabilities to return to the workforce. Initially he was employed to assist with plumbing work and later to assist with electrical work. Having successfully completed a preparatory training course the claimant applied for a position as an apprentice electrician at the XXXX. These are XXXX (LGH) and XXXX (SCH). The claimant was advised of the success of his application on 19 October 2000. On 30 January 2001 the respondent issued the claimant with a four-year fixed-term contract to run from 5 February 2001 until 4 February 2005. The claimant did not sign this contract. The Personnel Administrator (PA) advised FAS of the commencement of the claimant as an apprentice on 25 January 2001. The claimant was registered with FAS as an apprentice from 12 September 2001. The apprenticeship consists of seven phases with phases 1, 3, 5 & 7 being on the job and phases 2, 4 & 6 being college based. Having earlier completed phase 1, the claimant successfully completed phase 2 of the apprenticeship on 19 July 2002.

Problems arose at the beginning of phase 3 and at a meeting on 9 August 2002 that was attended by the claimant, the maintenance supervisor (MS), the maintenance manager (MM) and a representative from an organisation providing support to the claimant these problems were discussed. These problems were further discussed when the senior training adviser (STA) from FAS visited the claimant at work on 31 October 2002. STA met the tradesman to whom the claimant was assigned (TE). Six points emerged from this meeting: -

- The claimant complained of being bullied by the skilled electricians who “did not want him”
- He had seen no wiring since phase 2
- He was not working at a trade and might as well be working in a supermarket
- He was not shown anything
- The problem was very serious and deep-rooted, virtually all the electrical work was at LGH and he was not wanted there as he had made a complaint of bullying against a senior tradesman
- TE opined that there was not the range of work at SCH where the claimant was based to meet the requirements of the apprenticeship

As a result of this meeting STA arranged a meeting with MS for 20 November 2002. At this meeting STA raised the points, which arose on 31 October 2002, with MS. STA put forward three options to MS: -

- Covering the range of work required across both hospitals
- In consideration of the complaint of bullying the respondent could look at the possibility of letting the apprenticeship continue in an alternative venue, possibly Sligo
- Look at the possibility of putting the apprentice into local industry

MS later told TSA that the claimant was to be given the range of work by being put with each of the four electricians in Letterkenny on a three-month rotation.

The claimant successfully completed phase 3 of his apprenticeship and then attended phase 4 from 31 March 2003 until 20 June 2003 where he failed the electrical craft science (ECS) part of the exams, which form part of phase 4. The respondent was not aware of this failure until 20 November 2003 when MS received a letter of 12 November 2003 from Sligo IT, where the claimant had attended for phase 4, enquiring about the claimant’s intention to repeat the ECS exam. Sligo IT needed to know the claimant’s intention by 21 November 2003, the claimant told MS that he was not re-sitting the exam and that MS should have received a letter from the claimant’s union official (UO) explaining the reasons. No such letter was put before the Tribunal. MS was concerned about this failure to repeat the exam because an apprentice is allowed three attempts to pass and an absence from an exam is considered to be a failed attempt. Should an apprentice fail an exam on three occasions then FAS consider an apprenticeship to be terminated. The claimant did not attempt the ECS exam at this time.

The claimant had lodged a complaint with the respondent about bullying, this related to his experience in LGH. On 13 January 2004 MS wrote to the claimant seeking an explanation for his not re-sitting the ECS exam. This letter also noted the claimant’s request to remain in SCH whilst his complaint was dealt with. He was asked to advise when he wished to consider LGH as part of his work experience. The claimant again failed to attend for his third attempt at the ECS exam in March 2004. As a result STA wrote to the claimant on 21 April 2004 to tell him that consequent on his failure after three attempts to pass ECS his contract of apprenticeship was automatically

terminated. The claimant was also advised of his right of appeal against this termination. Following a meeting to discuss the situation regarding the future of the claimant's apprenticeship on 26 May 2004 and attended by the general manager (GM), MS now promoted to the position of maintenance manager, PA, the claimant and UO the claimant was given one month's pay in lieu of notice of termination of his contract with a proviso that this would be re-considered should the claimant successfully appeal against the FAS decision of 21 April 2004.

The claimant was successful in his appeal against the termination of his contract of apprenticeship and was granted a fourth attempt at ECS in a letter from FAS on 20 August 2004. The claimant wrote to PA on 3 September 2004 seeking re-instatement as an apprentice. GM replied by letter of 9 September 2004 that the respondent would not take the claimant back until he had successfully completed phase 4. Any return would be subject to the condition that the claimant accepted that his placement would be in both hospitals and would not be restricted to SCH. The claimant lodged a complaint with the Labour Relations Commission about not being allowed to return to his placement until he had successfully completed phase 4 and at a Rights Commissioner hearing on 11 April 2005 it emerged that the claimant had now passed phase 4. The Rights Commissioner's recommendation, dated 20 May 2005, was that the claimant be reinstated from the date he passed phase 4.

FAS considered the claimant to have been on phase 5, which is to take a minimum of six months, since 21 June 2003 and consequently wanted the claimant to commence phase 6 in Dundalk on 20 June 2005. Phase 7 is to take a minimum of three months to complete. On 14 June 2005 the claimant told the assistant general manager (AGM) and MS that he had an eyesight problem that made it difficult for him to attend college due to problems reading a computer monitor. The claimant did not attend phase 6 in Dundalk. On 5 July 2005 AGM wrote to the claimant extending his contract, which had expired in February 2005. However on account of the eyesight difficulty the apprenticeship placement was terminated until the claimant was able to meet the health requirement to fulfil phase 6. The claimant did not attend work after 8 July 2005 and on 18 July 2005 both MS and GM wrote to the claimant to explain the reason for his absence. The claimant returned to work on 12 September 2005 having gone back on the payroll from 1 September 2005. In the event the claimant attended phase 6 in Sligo IT from 19 September until 2 December 2005 and completed this phase successfully. On his return from phase 6 the claimant continued to work in SCH.

On 25 October 2005 PA wrote to the claimant with a fixed term contract as an apprentice electrician to run from 1 September 2005 until 6 March 2006. The claimant did not sign this contract. PA wrote to the claimant on 15 December 2005 to remind him of this and to seek a signed copy of the contract from him. On 10 January 2006 the claimant met AGM in the presence of PA and UO and it was confirmed in a letter from AGM the following day that the claimant's contract was extended until 6 March 2006 to facilitate the claimant successfully completing phases 5 & 7 of his apprenticeship. It further confirmed that there would be no extension beyond 6 March 2006. In the event the claimant left the employment at that time without having completed either phase 5 or phase 7.

The bullying and harassment allegations made by the claimant go back to the beginning of his employment in 1999 and were ongoing from that time. An investigation into these allegations was begun in January 2003 with a report in May 2004 recommending the appointment of an external mediator to find a mutually acceptable outcome between the claimant and other members of the maintenance staff. This mediation was never brought to a successful conclusion.

## Determination

In this case it is accepted by both parties that the claimant was engaged in a statutory Apprenticeship under the auspices of FAS the state training agency. While there are some differences between the parties as to the actual commencement date of the Apprenticeship, it is again accepted by the parties that the Apprenticeship was registered with FAS in or about the 12<sup>th</sup> of September 2001.

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."*

Section 2 of the Protection of Employees (Fixed-Term Work) Act 2003 provides that.....

*"fixed-term employee" means a person having a contract of employment entered into directly with an employer where the end of the contract of employment concerned is determined by an objective condition such as arriving at a specific date, completing a specific task or the occurrence of a specific event but does not include;*

*(a) employees in initial vocational training relationships or apprenticeship schemes"*

As the claimant was neither in the first six months of, nor within one month of the completion of his apprenticeship the respondent is unable to rely on section 4 of the Unfair Dismissals Acts, 1977 to 2001, which precludes claims under those Acts under such circumstances. While the respondent issued the Claimant various fixed term contracts and in particular a fixed-term contract from 1 September 2005 until 6 March 2006, the claimant did not sign this contract, and the Tribunal does not consider the claimant's employment to be limited to the term of this contract. Indeed the provisions of the Protection of Employees (Fixed-Term Work) Act 2003 expressly exclude Statutory Apprenticeships.

In an Apprenticeship relationship both the Apprentice and the Employer have rights and obligations. The Employer must inter alia use his best efforts to train the Apprentice and provide sufficient and suitable work under suitable supervision and with suitable facilities and equipment for the Apprentice to complete his or her training. The Apprentice must inter alia obey the directions of the Employer and diligently carry out the works assigned to the best of their ability and complete the Apprenticeship training, including any FAS tests, in a timely and diligent manner. While the claimant did not take as active an involvement in his apprenticeship as desirable the respondent was aware of this and of the claimant's circumstances and difficulties, but failed to take any adequate steps to address the problems arising. The Tribunal accepts the claimant's evidence that he was effectively left with little or no work to do for long periods of time. The Tribunal is further satisfied that the respondent did not take sufficient steps to provide proper facilities, including supervision, for the completion of the apprenticeship. For all these reasons the Tribunal is satisfied that the dismissal was unfair. The Tribunal determines that, under the Unfair Dismissals Acts, 1977 to 2001, the claimant is to be re-engaged two months from the date of this determination to complete his statutory apprenticeship in LGH. The period of reengagement is to be until the completion of the apprenticeship or for a maximum of nine months. The Tribunal feels that such a period of time should be more than adequate to allow the claimant to complete his Apprenticeship. The period from the dismissal until the re-engagement is to be treated as a period of unpaid suspension which preserves the claimant's continuity of employment. The claimant is to engage fully in his apprenticeship and to obey the instructions of his manager. The respondent is to fully engage with the claimant to ensure that all reasonable facilities (including supervision) are made available to ensure the completion of the apprenticeship. The Tribunal was very impressed by the evidence of STA and feels that if his

expertise had been fully availed of by the parties the apprenticeship could have been concluded in a timely fashion. For this reason the Tribunal strongly recommends that the parties request that FAS are actively involved in the completion of the apprenticeship.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)