

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
Employee

CASE NO.  
UD533/2007

against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy SC

Members: Ms. A. Gaule  
Ms. A. Moore

heard this claim in Dublin on 27 November 2007

Representation:

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Claimant(s) :

Ms. Susan Jones BL instructed by Molloy Murphy, Solicitors,  
4 Coolport, Coolmine Business Park, Dublin 15

Respondent(s) :

No attendance or representation

The determination of the Tribunal was as follows:-

By letter dated 12 October 2007 the claimant's firm of solicitors wrote to the Tribunal advising that this case had been before the Tribunal on 28 September 2007 but that on that day they were asked to apply for an adjournment by a gentleman from the respondent owing to a sudden bereavement that he had suffered. The 12 October letter went on to say that an additional claim form was being lodged so that it might be linked to the one already submitted as there had been some confusion as to the correct identity of the respondent.

The first matter for consideration at the 27 November 2007 hearing was the fact that the Employment Appeals Tribunal secretariat had received a medical certificate stating that the abovementioned gentleman from the respondent would not be fit to attend for some months.

Given that the claimant's representatives had not only acquiesced in an initial postponement of the case but had actually moved to have that postponement granted on behalf of the respondent the Tribunal felt that it could no longer deny the claimant the reasonably prompt hearing it was set up

to provide. Consequently, the Tribunal allowed the case to proceed.

The Tribunal heard evidence that the claimant believed that he had been unfairly dismissed within the meaning of the Unfair Dismissals Acts, 1977 to 2001, and the financial loss he had incurred as a result was submitted to be €6,084.35 net of all monies he had earned in mitigation since the end of his employment. It was claimed that he had in excess of twelve months' continuous service when his employment with the respondent ended.

A submission was also made in respect of costs in the amount of €689.70 incurred in preparation for the case by the claimant's representatives.

### **Determination:**

Under the Unfair Dismissals Acts, 1977 to 2001, the Tribunal finds that the claimant was unfairly dismissed and awards him compensation in the amount of €6,084.35 under the said legislation.

Furthermore, with regard to the application for costs, the Tribunal gave consideration to Statutory Instrument 24 of 1968 (as amended by Statutory Instrument 114 of 1979) which includes the following:

19. (1) Subject to subparagraph (2), the Tribunal shall not award costs against any party to an appeal.

(2) Where in the opinion of the Tribunal a party to the proceedings (and, if he is a respondent, whether or not he has entered an appearance) has acted frivolously or vexatiously, the Tribunal may make an order that that party shall pay to another party a specified amount in respect of travelling expenses and any other costs or expenses reasonably incurred by that other party in connection with the hearing.

(3) Notwithstanding subparagraph (2), costs shall not be awarded in respect of the costs or expenses in respect of the attendance of counsel, solicitors, officials of a trade union or of an employers' organisation appearing before the Tribunal in a representative capacity.

(4) Where the Tribunal has made an order under subparagraph (2), the amount referred to in the order shall be recoverable as a simple contract debt.

In accordance with Regulation 19 (2) the Tribunal does not award costs in respect of the attendance of the claimant's representatives. However, this division of the Tribunal draws a distinction between costs in respect of attendance and costs in respect of preparation. Therefore, as the Tribunal considers that the respondent in this case has indeed acted in a manner that can be held to be frivolous or vexatious, it orders the respondent to pay to the claimant the sum of €689.70 in respect of the preparation costs reasonably incurred by the claimant's legal representatives. This order is made under Statutory Instrument 24 of 1968 (as amended by Statutory Instrument 114 of 1979) and is in addition to the abovementioned award of €6,084.35 under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

