

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

8 Employees.

UD838/2006

UD1115/2006

UD1116/2006

UD1117/2006

UD1118/2006

UD1119/2006

UD1120/2006

UD1121/2006

against

2 Employers

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Hurley

Members: Mr. G. Phelan
Mr. T. Kennelly

heard this claim at Limerick on 7th November 2007 and 21st January 2008 and 22nd January 2008

Representation:

Claimants: Mr. Pat Condon, Branch Organiser, SIPTU, 4 Church Street,
St. Johns Square, Limerick

Respondent: Lane & Company, Solicitors, 26 Glenworth Street, Limerick

The determination of the Tribunal was as follows:

This case came before the Tribunal where the first named claimant alleged that she was dismissed due to trade union organisation, which is in dispute. The dismissal of the seven remaining claimants, it is argued, arose as a direct result of their support for the first named claimant, and that their dismissal occurred due to a lockout.

There was protracted argument on the third day of hearing, on 22nd January 2008.

Given the unusual circumstances of the case, the representative for the respondent gave sworn evidence in order to clarify the background to the explanation given by the respondent in his sworn evidence about his position vis-à-vis the events that led to an alleged dismissal, the alleged lockout and the submission of the claims currently before the Tribunal. In particular, as representative, she outlined the negotiations that took place between the parties at the Labour Relations Commission (LRC) on 11th September 2006.

The representative explained that the respondent contacted her in late July, and over the August bank holiday weekend in 2006. She received instructions from him on a range of industrial issues then affecting the respondent's business, which had culminated in a staff walkout, and the placing of an un-official picket on the premises.

The trade union letter of 1st August 2006 referred to seven points of difference between the parties. She advised the respondent to write to the trade union, asking staff to return to work and then to engage in discussions to resolve any grievances, **except** the alleged dismissal of the first named claimant, as they understood that case was referred to the EAT. The respondent's letter of 16th August 2006 to the trade union requested that picketing staff return to work, and work rosters were prepared with that in mind. These were sent not only to the trade union but also to individual striking staff by registered post. These registered postal items were returned to the respondent. The respondent did not avoid dealing with the trade union, which acknowledged receipt of the 16th August 2006 letter by return, on 18th August 2006. The respondent assumed that a return to work was agreed by the parties, predicated on the issuing of work rosters to each individual, and copied to the trade union. The respondent never issued any note, letter, etc., that stated the claimants jobs were gone. Rather, the witness was instructed to deal with all outstanding issues, **except** the sole issue of the alleged dismissal of the first named claimant. The respondent subsequently informed her that the claimants had not turned up for work and so, on 29th August 2006, she corresponded with the trade union again on the matter. Despite attempts to resolve the dispute the picket continued. During the last week of August and first week September 2006, correspondence was exchanged between the representative and another legal firm regarding the possibility of obtaining injunctive proceedings to stop the picket. The original seven points were, however, due for referral to the LRC despite the notification of those demands during a period where an un-official picket was placed on the respondent's business premises. The LRC provided a Conciliation Officer, but it was still the respondent's intention to first seek the claimants' return to work, and to then deal with the industrial relations issues. On the basis that a meeting had been arranged for 11th September 2006 at the LRC, she believed that the employees agreed to return to work. She understood that at least three employees did so on 10th September 2006. However, an issue arose when, on their return to work, striking staff claimed they felt intimidated by having to work with a nurse, rather than in pairs with another care assistant.

The LRC meeting took place on 11th September 2006, but by this stage, the situation had deteriorated to the extent that the three employees who attended for work on 10th September walked out. One member of staff resigned.

The focus of the 11th September meeting was the resolution of the seven points, as set out in the 1st August letter, and to seek the return to work of the employee who had resigned the previous day. The respondent agreed to ignore that resignation and to treat it as if it had never occurred. The respondent engaged on every point, where the main discussions were centred on the specific

demands on pay and conditions, in addition to the resignation already referred to. The Conciliation Officer wrote a framework, based on points of agreement between the parties, into a journal. However, the respondent undertook to revert to the LRC within a week or two of the meeting to indicate what it could afford, based upon a costing of their proposals. The agreement was again predicated on the belief that the employees would return to work.

On 12th September 2006, the picket was re-instated, which attracted negative press attention. This, she stated, was the sequence of events from the respondent's perspective.

In cross-examination, the representative repeated that sequence of contacts made by the respondent over the bank holiday August weekend in 2006, and that she took instruction from him by telephone. On her return to work, post August bank holiday weekend, she spoke to the respondent again, as well as to other staff in the organisation. She said it was clear that management wanted staff to return to work and to avoid friction. Their first task, however, was to reduce the immediate effect of the un-official picket, and then to deal with the issues. She said that the dispute and the un-official picket were already almost two weeks old by the time she received instructions from the respondent. Many attempts to communicate were made in order to get the striking workers to return to work. She said that the respondent was due to revert to the LRC within a week or ten days from the 11th September meeting, with their response to the issues raised at that meeting. However, she said that by that stage the picket had been re-instated.

In reply to questions posed by the Tribunal, she agreed that the respondent had to reply to the LRC, after it had conducted a financial analysis and provided a costing of its proposals to resolve the dispute. A list of issues was returned to the LRC, but the picket was re-instated on 12th September, and there was no further communication from the LRC. She agreed that she advised the respondent concerning the letter dated 16th August 2006, and she interpreted the trade union's response of 18th August as a rejection of proposals to meet and discuss the issues under dispute. While the respondent was working to get staff to return to work, she said it appeared that the claimants, through their trade union, wanted to negotiate on the terms of employment generally. The alleged dismissal of the first claimant was the **only** issue excluded from the discussions at the LRC because, by that stage, that claimant had referred a claim to the EAT.

Respondent's case.

The **respondent** gave detailed evidence on 7th November 2007, and on 21st and 22nd January 2008.

He stated that he operated a nursing home with a number of others, in partnership, and that he had done so for a number of years. There were thirty-five members of staff, made up of nursing, care assistants, administration and catering staff. He confirmed that as respondent he received a subvention from the Health Service Executive (HSE) in respect of individuals in their care and that the nursing home operated in accordance with the guidelines set down by that agency. Any breach of those guidelines, he stated, would require a correction of the fault and, if not corrected, a nursing home could be closed down. He was required to complete a return of staffing numbers, based on the number of beds, to the HSE on a weekly basis. Where staffing levels were breached, the HSE would write to a respondent and, if not corrected the agency could, following a visit, again opt for closure. He also stated that the HSE conducted "surprise" inspections and checks. At the time of the alleged dismissal, he stated that thirty-eight beds were occupied. There was a qualified nurse on duty at all times over each twenty-four hour period. Daytime care duties required the most staff, and apart from the qualified nurse on duty, he said that eight other care assistants were scheduled to

work during the daytime. Three carers covered duties overnight, and this staffing included one qualified nurse and two care assistants. Therefore, nursing and carers operated a shift-work system, to ensure that proper levels of care were maintained.

The witness stated that the **first named claimant** worked with the respondent for approximately ten to eleven months. She worked during the daytime shift, and her hours of work varied, for example, she worked either 08h.00 a.m. to 16h.00 p.m., or 08h.00 a.m. to 18h.00 p.m. He said that she never worked the night shift. Her salary was paid on a fortnightly basis, and this was calculated based upon the total number of hours worked by reference to her hourly rate of pay.

On 24th July 2006, two new care assistants were due to commence employment with the respondent. He met the claimant that morning, and he stated that she told him that ‘I’m not letting you bring in two new foreign carers’. Although he initially ignored the claimant’s statement, he later discovered that she had repeated it to his wife. He said that he called the claimant aside mid-morning, gave her a verbal warning at which point she told him “to f**k off” and walked out. He said that he didn’t know what to do and that he later spoke to the Matron about the situation. He met and spoke with the claimant later that day but again she walked out of the second meeting. He explained that while he took no immediate action, he could not tolerate staff telling him who he could, or could not recruit, or how to conduct his business. He adverted to two previous occasions, when the claimant had refused to work with two foreign staff, and he alleged that she (the claimant) wanted him to remove two students from the work roster, that she had objected to his taking in, or her dealing with, new residents. The issue of new residents was discussed by approximately ten to twelve care staff, (some day, but mostly night-time care staff attended), at a meeting held by them on 20th July 2006, which took place on the respondent’s premises. While he attended, he said he was not given a written memo in advance of the meeting, or prior notification of the issues to be discussed. While no one individual spoke on behalf of the group, he walked out during it. He understood that the meeting lasted some twenty minutes. He said that no further meetings took place between 20th and the 24th July 2006.

Following the claimant’s actions on the morning of 24th July 2006, he repeated that he took no immediate action concerning her attitude to working with, or comments about his recruitment of other non-national staff members. He only did so when he discovered that she had repeated her refusal to others. He repeated that he issued a verbal warning only to her, at a meeting that took place between 11h.00-11h.30 a.m. He again repeated that he sought the assistance from the Matron, and that he then left the respondent’s premises to return home. He was not aware, he said, at any stage that the claimant was a member of a trade union and he stated that she never raised that issue with him at either of the two meetings he had with her on the 24th July 2006. He stated that he stood over his own actions as he could not accept or tolerate staff telling him how to conduct his business. He maintained that the claimant walked out of her employment.

The witness said that he became aware that the claimant was a member of a trade union two days after the event, when members of staff were stopped at the gates, where a picket had been placed on the premises. He was not aware which trade union represented the claimant, and he stated that she had not asked for any representation at either of the two meetings he had with her. However, following the alleged dismissal he discovered that the claimant was, in fact, a member of SIPTU, and he dealt with her trade union representative thereafter.

Under cross-examination, the witness maintained that the claimant refused to comply with the instructions of management, and refused to work with non-national staff. He confirmed that at the time of the incident he employed thirty-five staff, had between thirty-two to thirty-eight beds,

which complied with HSE guidelines on the ratio of staff to beds. He repeated the level of care provided at night. He also stated that he was generally aware that the claimant had worked in another nursing home. He believed that she may have been paid an hourly rate of €8.00 at commencement of her employment, but he said he was “almost positive” that she was paid €9.00 per hour for the entire duration of her employment. He had no direct involvement in hiring the claimant. He re-stated the circumstances that had led to the cessation of her employment and denied that he dismissed her.

He was not aware if the respondent had procedures in place to deal with grievance and disciplinary matters. He maintained that, as he felt compromised, he decided not to deal with the matter directly but first seek the assistance of the Matron. He stated that her advice was ‘to leave her home’, which he agreed to, and accepted. He repeated that he issued a verbal warning only to the claimant on the morning of the 24th July 2006 but, given that she had walked out, he had no further opportunity to discuss matters with her until later that evening, when she again walked out of a second meeting. He repeated that the claimant had not asked for representation and that the subject never arose during either meeting with her. He repeated that he was unaware that the claimant was a member of a trade union. The witness agreed that, apart from the claimant, a number of other staff all spoke out during the course of the evening meeting on 20th July 2006. He said that even though he was not aware, in advance, of the issues to be discussed at that meeting both he, and his wife, went to it. He presumed it was wage related. He refuted the claimant’s contention that she was subsequently singled out for her participation in that meeting and for the opinions she expressed during it. He stated that his wife was also present at the time he issued the verbal warning to the claimant.

When asked to comment that he became aware on Monday, 24th July 2006, that she (that is, the claimant) ‘might try something’ the witness could not say what she meant by it.

Under further cross-examination, the witness repeated that he issued the verbal warning at the first meeting, circa 11h.00 to 11h.30 a.m. on Monday, 24th July 2006. Once dealt with, he did not expect anything more to come from it, and he did not anticipate the nature of her response. The second meeting took place at circa 5h.30 p.m., and this meeting was attended by the witness, the Matron and the claimant respectively. Again, he stated that the claimant did not ask for representation. He denied telling the claimant that that ‘he couldn’t put up with her attitude’. However, he repeated that he could not have her interfere in the running of his business. He denied dismissing the claimant during the course of the second meeting on 24th July 2006, instead repeating that there was no opportunity to discuss anything with her. He denied that his evidence contradicted his previous written submission, instead repeating that the claimant was not dismissed at the time of the second meeting, but that notice of her dismissal followed later, in writing, as she had walked out of her employment. He maintained that he was unaware that she was a member of a trade union during the course of these events.

In reply to questions from the Tribunal, the witness maintained that he issued a verbal warning only, which he believed would be simply noted and placed on the claimant’s personnel file. He could not say how long that warning would remain on file, or when it would be lifted. He confirmed that he adhered to National Wage Agreements, and that staff members were generally aware when such agreements had been agreed. He was unaware of the necessity to have procedures to deal with grievances. When asked to say what the verbal warning referred to, the witness said that he issued it given that the claimant ‘tried to tell him what to do’. He said that the eventual dismissal related to the use of abusive language towards him. When asked, he stated that he had employed foreign nationals even before he engaged the claimant. He had not issued contracts of employment to his employees.

Under further questioning from the Tribunal, the witness said that he believed that the purpose of the meeting of 20th July 2006 was wage-related. He said that it wasn't a meeting as such, and that everyone was 'speaking at the same time'. There was no reference made to trade union membership at any point during the course of that meeting, he said. Rather, the discussion centred on the intake of prospective resident/s. On Monday, 24th July 2006, the claimant expressed her views, and while he could not comment as to whether she also spoke on behalf of other members of staff, he maintained that it was only due to her later actions that he decided to take action. However, he said that the claimant 'stormed out' of both meetings and he was unable to resolve the matter at that time. The witness stated that he was contacted by telephone at his home on Tuesday, 25th July 2006 and informed by one of the nursing staff that the claimant had reported for duty that afternoon, at approximately 15h.00 p.m. He thought she might have remained working for about one-half hour. A picket was placed on the respondent's premises on Wednesday, 26th July 2006.

He stated that at the time of this incident he employed thirty-five staff, which included a 'handful' of non-nationals. He now employed forty staff, fifteen of which are non-nationals.

The respondent was recalled to give evidence on 21st and 22nd January 2006 in respect of the seven remaining claimants.

He stated that about two days after the events involving the first named claimant, he received an early morning telephone call to advise him that about five care staff had placed a picket on the premises. He was not given prior notice of either a strike, or the placing of a picket on the premises. Nor was he advised that the strike related to the alleged dismissal of their former colleague. He confirmed the strike lasted for approximately six weeks but could not give an exact date when the picket was removed. He believed that the reason for placing the picket related to a claim for extra payments, holiday pay, and on the employees terms and conditions of employment. Care staff did not inform him that they had joined a trade union. He stated that the picket was very disorderly and that at one point he had to call the Gardai.

The respondent hired temporary care staff; no one was offered permanent employment and that everyone understood and accepted this. He maintained that about five to six employees were on picket duty, but he alleged that the trade union also brought in others to undertake picket duty. At times, there were ten to twelve on picket duty. He stated that he tried on several occasions to get the workers to return to work, by writing to them via registered post, posting the duty roster on the door, and that he sent the duty roster to their representative. He also met staff on different occasions. At one stage, he advised them that he believed 'they were being used'. He also engaged the services of his representative to negotiate a return to duty, by way of his continuing attempts to get the workers to return to work. He understood that there was an agreement whereby staff would return to work based upon the agreement that a meeting would take place on Tuesday, 11th September 2006 at the LRC. He maintained that each member of staff was given a copy of the work roster, and that no further action would be taken against staff. At least two, if not three employees returned but two only did so for a few hours. He said that one of those two rang him on several occasions; that the Matron had rung and informed him that that particular individual had refused to work maintaining that 'they were afraid' (of the respondent), and cited health and safety reasons. There was no foundation for that belief, he said, but, in any event, he let the Matron deal with the issue. He said that none of these employees were ever locked out or prevented from returning to work.

He was never informed that members of staff were not returning to work, and re-iterated that he

neither prevented anyone from returning to work, nor replaced any member of staff, nor refused to negotiate with the trade union. He understood that the matters in dispute were resolved at the conciliation meeting at the LRC, as a result of which he expected staff to return to work. A letter dated 26th September 2006, from the trade union, stated that their claims had been referred for adjudication by the EAT. He believed that there the matter rested, and repeated that he never advised staff that their employment was terminated, or that there were no jobs for them. He was clear on that fact. He believed that the real reason for the strike related to general pay and conditions of employment, and had nothing at all to do with the alleged dismissal of a former employee. There was no petition submitted by the employees on behalf of that employee. The striking employees were never subjected to harassment. The witness recalled receiving a letter dated 1st August 2006, and agreed that he was aware from that date that the striking employees were represented by a trade union. However, he again denied knowing that the first named claimant was represented by the trade union at the time of her alleged dismissal, and maintained that when he became aware he corresponded with her representative.

His recollection was that of the seven issues under discussion at the LRC, the first referred to trade union recognition and that the second referred to the alleged dismissal of the first-named claimant. The other five issues related to pay and conditions, and that he spoke on different occasions with the trade union on these matters. He claimed he never refused to deal with the trade union on any issue. However, he stated that he took legal advice on the ongoing dispute, which lasted about two and a half-months. He admitted that he spoke with two employees about their return to work, but that none of the employees ever approached him to ask if they could do so. He said that the employees were welcome to return to work at all times but that he only became aware that would not do so on 26th September 2006, in the letter from the trade union. There was no correspondence that stated the employees were no longer employed.

He said that two employees actually submitted medical certificates, and that he did his best to get the employees to return to work.

In cross-examination, on the claims of the remaining seven claimants, the respondent repeated his involvement on the matter, and said that the Matron normally completed the rosters. He repeated that he had no problem with the trade union representing the employees. He explained that the reason for the letter of 28th July 2006, sent to the first named claimant by a legal firm other than his representative was his attempt to injunct the picket. When asked about his actions over the period 28th July-1st August 2006, the respondent stated that he had accepted advice on trade union recognition and had done so. He could not recall either receiving or replying to two letters dated 3rd and 4th August 2006 respectively from the trade union. With regard to the issue of getting employees back to work, which was the main point of the trade union letter of 4th August, the respondent replied that he sent registered notices to all striking employees to achieve that objective. They were welcome back to work at all times, he explained, and had even suggested to some of them that they obtain impartial advice. When put to him that some of the employees had returned to work circa 7th August 2006, arriving at approximately 20h.00 to 20h.30 p.m., and were refused, the respondent said they just got into cars and left. He denied ever telling two employees that there was no work for them. He denied instructing a nurse to tell employees that there was no work for them. The respondent repeated that he sent a notice to employees by registered mail but that the individuals involved did not accept them. In an interjection, the representative for the claimant stated that he advised his members **not** to accept any mail and, instead, that they should forward it to him.

The respondent could not recall if he received a series of letters during August 2006 from the trade

union; he understood his legal representative was dealing with all matters. He stated that he spoke to the trade union representative by telephone.

A meeting, or meetings, were arranged, but in an exchange between the parties differences emerged as to which side cancelled them. However, the parties agreed that they met on 30th August 2006, and agreed that the matter be referred to conciliation at the Labour Relations Commission. That meeting eventually took place on 11th September 2006, to discuss the seven original issues. The respondent believed that all matters were resolved at the LRC meeting, except the issue of care staff working under their own supervision and not that of a nurse. He accepted that members had agreed to return to work on 10th September 2006, based on the meeting arranged at the LRC for the next day. However, he maintained that the three employees who attended for duty on 10th September stopped work during their shift, citing that they were afraid of the respondent, and for safety and health reasons.

On 22nd January 2008, the respondent clarified statements he made during evidence the previous day.

He stated that upon receipt of correspondence he passed it to his legal representative, and that he instructed her to reply to any correspondence. In reply to questions from the Tribunal, the respondent stated that he prepared rosters a fortnight in advance of an actual work period to ensure an adequate number of staff were scheduled to work. He explained that around the 1st August 2006 he needed to take legal advice before entering into a meeting with the then striking employees. He could not recall dealing with, or replying to trade union correspondence, in particular the letters already referred to dated 3rd and 4th August 2006. He believed his representative was dealing with all such correspondence.

A **second** witness for the respondent gave evidence on 7th November 2007.

He stated that he worked in the nursing home as a health care worker for approximately eight months, from Summer 2006, but after the events adverted to by the respondent had occurred. He stated that he was employed on a temporary basis only, and had never been offered permanent employment. He said that he was the only person hired, and repeated that he was taken on in a temporary capacity only, to provide care.

A **third witness** for the respondent gave evidence on 22nd January 2008.

She said that the first named claimant was dismissed at end July 2006. The only contact made by the trade union, on her behalf, was in a telephone call on the day of the formal dismissal. She said that she understood that the trade union official asked to speak with a manager; she took that call. He asked if the respondent recognised a trade union; she replied in the affirmative, but stated that she was only one part of the management. That, she said, was the only contact made by the trade union.

In cross-examination, the witness made no comment when it was suggested that the trade union official had spoken to another manager by telephone at nighttime. The witness could only recall taking a telephone call in the office.

Claimants' case.

The **first** named claimant gave evidence on 7th November 2007.

In sworn evidence, she stated that she commenced employment with the respondent on 25th September 2005. She was never subjected to disciplinary proceedings, nor spoken to about her work performance during the course of her employment with the respondent.

She stated that the employees looked for the meeting of 20th July 2006, which she said was to discuss and negotiate pay as well as the issue of hiring inexperienced staff. By this, she meant that such staff members were not trained in the care of the elderly, in manual handling techniques or in First Aid. She said that although the respondent had never provided training to or for her, she had completed a course in manual handling on a previous occasion. The claimant said that all day care, and nighttime staff attended the meeting on 20th July 2006, which was approximately eleven staff. She said that the staff identified a number of issues, but the respondent did not appear to take them seriously. She said that she, along with other employees, joined a trade union on 21st July 2006 and that she subsequently brought her grievance to the attention of the trade union.

The claimant said that while her shifts varied she was scheduled to work from 08h.00 a.m. until 18h.00 p.m. on 24th July 2006. She took her break at 11h.15 a.m. that day, and at 11h.30 a.m. she was asked by the respondent to go to the office. She stated that she was told to 'stop interfering' with staff following which she left and returned to her duties. She confirmed that at 13h.15 p.m. she was outside on a break when the respondent came out, waving a piece of paper. She said that he referred to her taking a half-hour for a break, at which stage she stated that he issued a verbal warning to her. Although she requested the verbal notice to be put in writing, she said that she never received it in that format. After this event, she returned to work, and spoke to three other colleagues asking them to clarify the time she took her break. She was approached again later that afternoon, at approximately 17h.25 p.m. while she was still on duty. She said that the respondent invited her for a chat but that she was reluctant to do so without having a representative with her. However, she attended the meeting, and the respondent and the Matron were also present. The claimant stated that the respondent alleged 'she was the ringleader in all of this' and that he then said he 'would have to let you go'. The Matron did not speak at the meeting, and although she asked to speak privately with her, the claimant said that the Matron (who was not her direct line manager) advised her that she was present merely as a witness. The claimant said that she remained on duty to complete her shift and left at 18h.00 p.m. She understood that the purpose of the second meeting was for a chat, but that instead she believed she was dismissed during the course of that meeting.

On the following day, Tuesday, she looked for a meeting with her trade union representative, which took place at 13h.00 p.m. She was scheduled to report for duty at 15h.00 p.m. that day, and she did so on his advice. She worked for approximately fifty-five minutes but a Staff Nurse informed her that the respondent had been in contact by telephone; the Staff Nurse then thanked her for turning up, but that she had done so on a voluntary basis. Having received further advice from her trade union representative, the claimant said that she then left the respondent's premises. She denied ever having difficulties or problems working with Irish non-nationals. Her main difficulty, she explained, arose due to the inexperience of staff whose primary responsibility was to care for the elderly, as well as her concerns for the safety and health of staff generally. She stated that she obtained employment in another nursing home four weeks later. She received a letter that stated the start and end date of her employment only from the respondent. She confirmed

that there were forty residents in situ when she first started working for the respondent but this had increased to fifty-four by the time her employment ceased. She repeated that she raised the issues of staffing levels and skills set with the respondent, but believed that she was dismissed not only for trade union organisation but that she acted as a trade union representative for her colleagues. She explained that when she returned up for work on 25th July 2006, but was told to leave, her colleagues felt that this was unfair. She maintained that she requested a right to representation; she had never received a copy of an employee handbook, or procedures to deal with grievance and disciplinary issues.

Under cross-examination, the claimant agreed that she had previously worked in another nursing home, but was not a member of a trade union while so employed. She denied that she worked elsewhere whilst employed specifically by the respondent. She maintained that she was not aware of any procedures to raise issues, or any concerns, when employed by the respondent.

Up to fifteen employees attended the first meeting, which took place on 20th July 2006, she said. The respondent attended, and she agreed that another individual, whom she claimed was the “acting matron” also attended; she disputed the fact that that individual was, in fact, the Matron. She held that there was no Matron in situ. She agreed that she was not a member of a trade union on 20th July 2006, but rather she joined a trade union only on 21st July 2006. She agreed that she did not formally advise the respondent at that point, stating that she did so on 24th July 2006. She said that she paid her union subscriptions from private funds, not from her salary. She was unsure about the level of inspections carried out by the HSE. She agreed that she was asked by her colleagues to formally act as a representative on their behalf on 21st July 2006 only, that is, the date she joined the trade union. She agreed that she had not immediately informed the respondent of that fact, and stated she did so on 24th July 2006.

Under continued cross-examination, the claimant confirmed that two new members of staff were due to start on 24th July 2006, stating that both were hired as care assistants. She disagreed that one of those two recruits was hired as a member of the services staff. She could not recall ever meeting the respondent early on Monday, 24th July 2006. She agreed that she had not informed the respondent that she had become a member of a trade union when she had another opportunity to do so later that morning, at the meeting held at 11h.15 a.m. When it was put to her that the respondent was still not aware at that stage that she had joined a trade union, the claimant replied that the respondent told her ‘to stop interfering with staff and all this union bull****’. She said that at 13h.15 p.m. the respondent waved a piece of paper and told her he was giving her a verbal warning ‘for interfering with staff’. She agreed that she then went to speak with three Staff Nurses, following which she returned to her duties until 17h.15 p.m., at which point she said that she was asked to go to the office and she arrived there at 17h.25 p.m. The Matron was present, and the claimant said that she asked for a representative, either a colleague or a trade union representative, to attend the meeting with her. She maintained that the respondent, also present, was aware that she was a member of a trade union based upon the remarks he made to her at their earlier meeting that day. When put to her that the reason for her dismissal was her refusal to work with non-national staff, the claimant denied the allegation, or ever having made a comment of that nature.

The claimant said that she asked for the verbal warning to be put in writing and that she understood the consequences of that warning. The claimant made no comment when it was put to her that the respondent did not want to issue a written warning to her. She did not comment, either, when it was put to her that she had used abusive language towards the respondent and had failed to engage with him by the time of their second meeting. The claimant said that the respondent told her she was the

ringleader and that he 'would have to let her go', during the course of that meeting at 17h.30 p.m. She stated that she left that meeting, from which she understood that she was being let go.

The claimant accepted the outcome of the events that occurred on Tuesday, 25th July 2006, stating that she reported for work on the advice of her trade union representative, that she left after working for fifty-five minutes, despite the fact that she believed that she had been dismissed at the meeting the previous evening. She said that she asked for the dismissal to be put in writing to her. She also stated that the trade union made representations on her behalf, that she discussed her dismissal with close colleagues (who were also claimants) on Tuesday, 25th July 2006 and understood that they were outraged. She became aware that an informal picket had been placed on the respondent's premises the next day, Wednesday, and that she remained on picket duty for four weeks, during which time she looked for alternate employment. She was successful in her search for other employment, and was initially paid €8.65 per hour, working night duty.

In reply to questions from the Tribunal, the claimant reiterated that she had no difficulty working with new staff, that her concerns related to the training of such staff to enable them care for the elderly.

In redirect evidence, the claimant agreed that language might prove a barrier but that she co-operated to break down any such barrier. She confirmed that an inexperienced carer would train and work alongside a more experienced member of staff.

At the hearing on 22nd January 2008, the representative for the claimants confined the specific evidence on the circumstances that led to their alleged lockout to the **third, second and sixth** named claimant. However, he alleged that **all** of the remaining claimants were provoked into a reaction in support of the first named claimant, their dismissed colleague.

The **third, second and sixth** named claimants all gave evidence on 22nd January 2008.

The **third** named claimant stated she commenced employment as a care assistant with the respondent on 5th September 2005. She had no written contract of employment, nor had the respondent made her aware of a grievance or disciplinary procedure.

She confirmed that while an un-official picket was in place she had been advised by her trade union representative to return to work. On 7th August 2006, the witness and the **sixth** named claimant reported for work, but she claimed a nurse informed them that they were not rostered for duty. She left the premises. On 8th August 2006, she again reported for work and was met, on this occasion, by the respondent and one other person and was told that there was no work for her, and to leave. She alleged she was locked out of her employment. An official picket was placed on the respondent's premises on 9th August 2006. She stated that it was a peaceful picket although a number of incidents, of an abusive nature occurred, some of which required the intervention of the Gardai. She said that during this period she perceived the respondent's behaviour as aggressive innature, which he levelled at the staff while on picket duty.

She stated that she was neither spoken to about her work, nor subject to disciplinary proceedings. She believed her dismissal was related to her trade union activities. She said that the sixth named claimant told her of the respondent's alleged threatening behaviour towards the second named claimant. However, she returned to work on the evening of 10th September 2006, at about 19h.50p.m., but was met by two nurses who told her that care assistants would now work with a nurse. As this was not the usual practice, she said she felt isolated, and threatened also. She asked

to speak to the Matron, or the respondent, which she did. She outlined her concerns to them but as she was afraid of the respondent she left the premises at approximately 01.06 a.m.

She confirmed her gross pay per fortnight was €352.00, based upon her working two separate shifts of twelve hours per shift, per week. She confirmed she was out of work from the last week in July 2006 up to 24th December 2006. She was aware that the Tribunal had only three options open to it, in the event of finding in her favour, that is, re-engagement, re-instatement or compensation. The claimant said that she would not return to work for the respondent.

In cross-examination, she could not give a specific reason why she, personally, feared the respondent. Under questioning, she believed that her last day of work was 26th July 2006. She stated that she did not receive the new roster that was sent to her, or to her union representative, by the respondent, via registered mail. However, she was aware that negotiations were ongoing around the time that she reported for work, on 7th August 2006, which she repeated she did on the advice of her trade union representative. When questioned as to the circumstances where the claimants **all** reported for work on 8th August 2006, she claimed that upon their arrival the respondent told them that there was no work for them and to go. She agreed that she next reported for work on 10th September 2006 and that she was aware that a meeting between the parties had been scheduled for Tuesday, 11th September 2006 at the LRC. She stated that the picket was re-instated, on 12th September 2006, as none of the issues under dispute were resolved at that meeting.

She maintained that she believed herself to have been locked out of her job on 8th August 2006, in that the respondent told them (the claimants) that there was no work for them, to go, which she said she duly recorded.

The **second** named claimant gave evidence. She stated that she was employed, in a fulltime capacity, by the respondent, and worked a forty-hour week, at the rate of €8.00 per hour.

She stated that she reported for work on 10th September 2006. She went about her normal duties, but on her return from a scheduled break the respondent ordered her to leave the premises telling her that if she 'didn't leave he would kill her, or he would get someone to kill her'. The claimant took that as an immediate dismissal. She retrieved her personal belongings and left the premises. She subsequently informed her trade union and colleagues about this occurrence.

In cross-examination, the witness agreed that there was no immediate difficulty when she started work on 10th September 2006. She repeated that immediately upon her return from a scheduled break the respondent threatened her with violence. She reported the incident to the Gardai, but did not take the matter any further than that. She took that threat to be a dismissal, hence her reason for asking for her P45 and to bring closure to the matter.

She was aware that a meeting took place at the LRC on 11th September 2006, but she said she did not attend. She was not aware that her re-instatement was discussed in that meeting, nor asked anyone to intervene on her behalf. She repeated that she felt threatened and insecure as a result of the events of the 10th September 2006. She obtained other employment on 1st December 2006.

The **sixth** named claimant gave evidence. She stated that she was employed as a care assistant from 11th September 2004. She had no written contract of employment, nor had the respondent made her aware of a grievance or disciplinary procedure. She stated that an unofficial dispute arose from the date of the dismissal of the first named claimant. She confirmed that she was told by the trade union to return to work, and she did so on 7th August 2006. However, she said that on her arrival she was

told that there was no work for her. She returned to the respondent on 8th August, to obtain work rosters, but the respondent informed her that there was no work for her, and to go. She stated that during the period of the alleged lockout, between 8th August and up to 11th September 2006 the respondent was both abusive and aggressive towards the staff when they were engaged on picket duty. The respondent's family members were abusive also, she said.

She agreed that she was instructed to return to work on 10th September 2006, prior to the meeting at the LRC on 11th September 2006. She reported for work that evening, but as the work systems were different from those she worked previously she felt isolated. As with the third named claimant, she also asked to speak to the Matron, which she did between 23h.30 and 24h.00 (midnight). She outlined her concerns for her safety to the Matron, whereas the respondent made a sarcastic remark to her. She also left the premises at approximately 01.06 a.m.

She stated that she was neither spoken to about her work, nor subject to disciplinary proceedings. She believed her dismissal was related to her trade union membership and activities. She was aware that the Tribunal had only three options open to it, in the event of finding in her favour, that is, re-engagement, re-instatement or compensation. The claimant said that she could not return to work for the respondent and opted for compensation, in the event the Tribunal found in her favour.

She believed that nothing was resolved at the LRC meeting on 11th September 2006. She confirmed that the picket was re-instated on Tuesday, 12th September 2006, and that the respondent became very abusive and agitated. She confirmed that she obtained other employment in late October/early November 2006.

In cross-examination, the witness could not state the exact date she joined the trade union, but indicated it was before the alleged dismissal of the first named claimant. She understood the implications that any loss of reputation held for the respondent. She also agreed with the suddenness with which events moved, from the initial alleged dismissal of the first claimant, to picket duty.

She agreed that she reported for work on 7th August 2006, and repeated that a nurse informed her that there was no work for her. She agreed that she was scheduled to work on 10th September 2006. She stated that she had spoken to her trade union in July 2006 before striking, but agreed that she had not expressed any outrage over the alleged dismissal of the first named claimant, a family member, with that official. She could not recall her last day of duty with the respondent, or recall if she requested the work roster. She accepted that it was reasonable for the respondent to arrange alternate cover when she did not attend for duty.

It was put to the witness that the reason why all eight claimants went, as a group, to the respondent's premises on the evening of 8th August 2006 was to demand the work rosters. She agreed that they went there with that intention. When asked to explain why they approached the respondent in that manner, without having their trade union representative present, she failed to reply. She also failed to reply when it was put to her that for them to do so was inexplicable, given that they had and continued to, assert their right to trade union representation.

In reply to questions from the Tribunal, the witness confirmed that nursing staff administered medication, whereas care assistants generally took care of the needs of the patients. She repeated her recollection of events of 8th August 2006, in that she said she was met at the front door by the respondent, was told there was no work, and to go.

The **four remaining claimants** gave evidence only as to their loss on 22nd January 2008.

The **fourth** named claimant stated she had had been declared medically unfit for work since 19th September 2006.

The **fifth** named claimant stated that she worked in a part-time capacity for the respondent, working twelve hours per week and was paid at the rate of €8.00 hour. Her salary was paid on a fortnightly basis. She also held another job, in conjunction with her employment with the respondent. At the time, she did not obtain alternative employment with similar hours to those worked by her when the respondent employed her; she said she only found babysitting duties.

She undertook work as a part-time special needs assistant up to September 2007, but she was now engaged on this work in a full-time capacity since September 2007.

The **seventh** named claimant stated that she worked two twelve hour night-time shifts per week when employed by the respondent, and undertook a course of study with VETOS at the same time. She said that she was out of work from 26th July 2006. She looked for alternative employment, attended an interview, but without a reference found it difficult to obtain suitable alternative employment. She approached the respondent for a reference but was informed that she had to resign first in order for the respondent to provide a reference. She submitted a letter of resignation in January 2007.

She was still engaged on the course of study and said that it was difficult to obtain employment to suit her studies.

The **eight** named claimant stated he had had been declared medically unfit for work, and was not available for work since. He was in receipt of social welfare benefits.

Determination.

Having considered the individual claimants' evidence and the respondent's evidence to the Tribunal and the evidence of witnesses on their behalf the Tribunal considers it necessary to make separate determinations as between the individual claimants.

The Tribunal notes that as a group the claimants returned to work on the 11th August 2006. The Tribunal is of the view that the respondent's letter of 6th September 2006 requesting the claimants to attend for work may be viewed as a significant declaration of the respondent's intentions with respect to the continuing employment of the various claimants. What is in issue in determining whether or not unfair dismissals were effected is the response of various claimants to that letter and the subsequent behaviour of the respondent.

It is noted that after the letter of the 6th September the **second, third and sixth** named claimants presented themselves for work and the remaining claimants did not.

The Tribunal finds that the **first** named claimant was unfairly dismissed. This claimant succeeded in obtaining a new job within four weeks of her dismissal. The Tribunal awards her €1,404.00 under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal finds that the claim of the **second** named claimant succeeds and awards her €3,840.00 under the Unfair Dismissals Acts, 1977 to 2001.

The **third** named claimant and the **sixth** named claimant reported for work on two occasions. They notified the Guards of their intention to report for work on 10th September 2006. They gave evidence to the Tribunal that they were afraid for their lives. The Tribunal notes that when the claimants' presented themselves they were told, "you will be treated with the respect you deserve" and is of the view that this remark could only be interpreted as a threat. The threat made to the **third** named claimant was not denied in evidence. In evidence the claimants stated they felt threatened. In the circumstances and given the gravity of the respondent's behaviour, the Tribunal finds that the claim of the **third** named claimant succeeds and awards her €1,936.00 under the Unfair Dismissals Acts, 1977 to 2001.

For the same reasons the Tribunal finds that the claim of the **sixth** named claimant succeeds and awards her €2,560.00 under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal finds in all the circumstances of the case that the claims of the **fourth** named claimant, the **fifth** named claimant, the **seventh** named claimant and the **eighth** named claimant under the Unfair Dismissals Acts, 1977 to 2001, fail. With respect to these claimants the Tribunal cannot find a credible or justifiable threat or other circumstance that would justify them from absenting themselves from work. The Tribunal would stress that letters enclosing rosters were sent out to all claimants. The letters were unopened.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)