

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO.

Employee

UD1113/2007

against

Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr. M. Flood  
Ms. A. Moore

heard this claim at Dublin on 4th April 2008  
and 27th June 2008

Representation:

\_\_\_\_\_

Claimant :

In person

Respondent :

Mr Seamus Clarke B.L. instructed by Mr Seamus Bowe, An Post, Solicitor's Office,  
General Post Office, O'Connell Street, Dublin 1

The determination of the Tribunal was as follows:-

**Respondent's case:**

The claimant is a non-EEA National who had been employed by the respondent since November 2001.

The Tribunal heard evidence from an industrial relations executive. He told the Tribunal that on 30<sup>th</sup> September 2007 an article in relation to the claimant was published in the Sunday World newspaper. Having read this article he felt that if the claimant was not legally entitled to be in this country it was possible he was not legally entitled to be employed by the respondent. The claimant's last Work Permit expired on 11<sup>th</sup> October 2004. The legal advice received stated

that unless the claimant had a valid Work Permit he was not entitled to work for the respondent and the respondent could face sanctions. He then asked the human resources manager to meet with the claimant on Monday 22<sup>nd</sup> October 2007 and ask him to provide a Work Permit. The response from the claimant was that he did not have a Work Permit and he did not need one. The claimant contacted the Secretary to the Director of Human Resources on Tuesday, the day after the meeting. The claimant was told that a letter was to be sent to him advising him of a meeting on the 24<sup>th</sup> October 2007. The claimant declined to have a copy sent by email. On Wednesday 24<sup>th</sup> October witness received a call from the claimant stating that he could not attend the meeting as arranged and witness suggested postponing the meeting until later that day.

The claimant mentioned EU Directives and spoke of his case being in the Courts and that he did not need a Work Permit. The claimant also said he had spoken with an official from the office of the Minister for Justice Equality and Law Reform and stated that a letter was to issue from that office stating that he was entitled to work. When witness contacted the office of the Minister for Justice Equality and Law Reform he was told that no such letter would issue and that the claimant should contact the Garda National Immigration Bureau. At all times it was explained to the claimant that without a valid Work Permit the respondent could not employ him but that they would re-employ him if he was lawfully entitled to work for the respondent. The following day, i.e. 25<sup>th</sup> October, witness received a letter from the claimant dated 24<sup>th</sup> October 2007 stating his right to work was based on a general Work Permit scheme of which he was a beneficiary due to his status as an asylum seeker. This scheme was introduced by the Minister for Justice Equality and Law Reform and was applicable from July 1999. The respondent's legal advisors sought information in relation to the claimant from the Garda National Immigration Bureau on 25<sup>th</sup> October 2007. Their response dated 8<sup>th</sup> November 2007 stated that the claimant availed of the scheme as introduced by the Minister for Justice Equality and Law Reform in 1999. It further stated that "once an application was determined the right to work ceased unless asylum status was granted". This letter also stated that on the 18<sup>th</sup> June 1999 the claimant in writing voluntarily withdrew his asylum claim and as he "no longer had an asylum application in being, he was no longer entitled to benefit under the scheme". This letter also stated that the claimant was challenging a refusal of an application for residency based on his marriage to an EU national. The claimant's employment was terminated on the basis of the legal advice received that he could not lawfully work for the respondent.

In cross-examination witness said that the claimant's employment was terminated having carried out exhaustive enquiries and not on the basis of the newspaper article. The letter dated 24<sup>th</sup> October 2007 was handed in on 25<sup>th</sup> October and not on 24<sup>th</sup> October. He received a telephone call on the 25<sup>th</sup> October to say that an item had been handed in for his attention. \_

The human resources manager in his evidence told the Tribunal that the claimant's union representative was present with him at the meeting on 22<sup>nd</sup> October 2007. The plant manager was also present. The claimant was told that if he could provide a valid Work Permit that he could work for the respondent. Having sought advice from the previous witness it was decided to suspend the claimant with pay pending his producing a valid Work Permit. The claimant requested written confirmation of the suspension and this was provided to him.

In cross-examination witness said that prior to the claimant's suspension on 22<sup>nd</sup> October 2007 he personally had not carried out any enquiries as to his status. The decision to dismiss was not based solely on the newspaper article but from legal advice that the respondent was not legally entitled to employ the claimant without a valid Work Permit. The dismissal letter was dated 24<sup>th</sup> October 2007 and stated that should the claimant obtain a valid Work Permit in the future, the respondent

would re-employ him subject to the availability of a suitable vacancy.

**Claimant's case:**

The claimant's partner who is an Irish citizen, gave evidence that she has been with him for seven years and they have a home and a four year old child. She has an on-going relationship with the claimant.

In cross-examination she stated that her relationship with the claimant began in or around October/ November 2001. The claimant had been married and separated from his former French partner in March 2001.

The claimant in his evidence told the Tribunal that the issues before the Courts at the date his employment was terminated would to a certain degree ascertain his right to employment. His partner is an Irish citizen therefore his right to work is contingent on his partners right to work. The claimant outlined to the Tribunal details of applications before the High Court, Judicial Review and Supreme Court appeal in relation to his status in Ireland. An application was pending in the High Court. In his letter dated 24<sup>th</sup> October 2007 he informed the respondent of the High Court matter and Judicial Review. He delivered this letter to the respondent's premises on 24<sup>th</sup> October 2007 which was within two days of the meeting on 22<sup>nd</sup> October. At this meeting on 22<sup>nd</sup> October his union representative told the human resources manager that he could not be dismissed while this case was pending in the High Court. The claimant also mentioned his right to residency and his right to work as a parent of an Irish child. He had been in Ireland more than eight years at this time. The claimant had a Work Permit up to 2004 and he outlined to the Tribunal his personal circumstances and details of legislation which he stated enabled him to work without a Work Permit after this date.

In answer to questions from Tribunal members as to why he did not give a copy of a Court Judgement in his favour to the respondent, since they said they would leave the job open for him if he could prove his legal entitlement to work, he said they were not willing to accept any documents. They were only interested in seeing a valid Work Permit. At the time he was under serious pressure and as far as he was concerned the respondent was aware he had a High Court judgement in his favour. He told the respondent there were procedures before the High Court. Even though he had withdrawn his asylum application in June 1999 his right to work had not been revoked by the Department of Justice Equality and Law Reform. He had been granted the right to work.

During the course of this hearing on 4<sup>th</sup> April 2008 the claimant received confirmation that he was granted leave to stay in Ireland.

At the conclusion of the case legal submissions were furnished to the Tribunal by both parties.

**Determination:**

The only information, documents and correspondence the Tribunal can take into account are those pre and including 24<sup>th</sup> October 2007. Much evidence was adduced regarding Judicial Review and Supreme Court appeals but the claimant conceded the respondent was unaware of any legal or court proceedings in being at the time of his dismissal. On that basis the Tribunal find his dismissal was not unfair in the circumstances. The claim under the Unfair dismissals Acts 1977 to 2001 is

therefore dismissed.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

