

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
Employee
MN295/2008

CASE NO.
UD319/2008

Against

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: Mr J Flanagan BL
Members: Mr R Murphy
Mr P Trehy

heard this claim at Dublin on 6th June 2008 and 4th September 2008

Representation:

Claimant: Ms Sile O'Kelly BL
FX Rowan & Co., Solicitors,
14 Upper Pembroke Street, Dublin 2

Respondent: XXXX

The determination of the Tribunal was as follows:

Determination:

On the consent of the parties the Tribunal awards the Claimant the sum of €1,867.41 as compensation in lieu of notice in respect of the claim under the Minimum Notice and Terms Of Employment Acts, 1973 to 2001.

The representative for the respondent renewed her application for the matter to be postponed. The representative for the claimant opposed the respondent's application. Proceedings alleging that the respondent herein caused personal injury to the claimant herein had been filed with the High Court since the first hearing date before the Tribunal. The application for a postponement pending the decision of the High Court had been refused at the initial hearing date as no proceedings before the High Court were in being at that time. The Tribunal carefully considered the extent to which the issues before the Tribunal could be distinguished from those before the High Court such that the Tribunal could proceed. The representative for the claimant outlined the claimant's case to the Tribunal and alleged, *inter alia*, that the claimant was incapacitated for the purposes of carrying out his normal work by the failure of the respondent to provide counselling to the respondent, but

that that incapacity had resolved itself such that the unfair dismissal of the claimant resulted in a compensatable loss arising out of the dismissal. The Tribunal is satisfied that both cases are intimately interlinked as establishing the date of the commencement of the compensatable loss for the purposes of the Tribunal would involve making a finding as to the duration of the injury the subject of the High Court claim. For this and other reasons the claim under the Unfair Dismissals Acts, 1977 to 2001 is therefore postponed pending the resolution of the High Court case of XXXX

The Tribunal notes that the claimant accepted that he was in receipt of Illness Benefit (formerly referred to as Disability Benefit) from the Department of Social Welfare for the period commencing on the date of termination of his employment with the respondent to the commencement of his next employment.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)