

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:  
Employee  
MN270/2007  
against

CASE NO.  
UD393/2007

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. P. Quinn BL  
Members: Mr. M. Forde  
Mr. T. Kennelly

heard this claim at Limerick on 15th May 2008

Representation:

Claimant: Ms. Maureen Lane,  
Solicitor,  
Lane & Company,  
26 Glentworth Street,  
Limerick

Respondent: Mr. Lorcan Connolly, BL  
*Instructed By*  
Ms. Mary Geary,  
Solicitor,  
McMahon O'Brien Downes,  
Mount Kennett House,  
Henry Street,  
Limerick

The determination of the Tribunal was as follows:

**Background:**

The fact of dismissal was not in dispute in this case.

The Claimant, a native of Uganda, is a social worker who obtained a B.A. Social Work Degree from the University of South Africa in May 1998 and as appears from her curriculum vitae, had a number of years practical experience as a social worker in that jurisdiction, prior to the commencement of her employment, in Ireland in 2002, on a contract basis, with the Health Service Executive. Up to the month of September 2005, it appears that the Claimant had acquired professional experience in a variety of social work fields, *inter alia* concerning hospice patients,

victims of domestic violence and child protection responsibilities.

The Respondent is a limited liability company by guarantee with no share capital and enjoys charitable status with the Revenue Commissioners. It is a non-profit making organisation, which provides a variety of specialist support services to deaf and hard of hearing people and their families.

In 2005, the Respondent *inter alia* advertised a vacancy for the position of a social worker based in Limerick. In addition to candidates for the position being required to possess a relevant professional qualification in their chosen field, it was considered that the successful candidate would ideally have a minimum of 2 year's relevant work experience, with knowledge of deaf issues and experience of facilitating groups an advantage. It was also stipulated that full training in Irish SignLanguage would be provided for the successful candidate.

Although the Claimant had not previously worked with deaf people, she was successful in her application for the position and on the 12<sup>th</sup> September 2005, she commenced employment with the Respondent, as a social worker based in Limerick.

This was to be a full time and permanent position at a salary of €49,827 per annum, Point 6 of the Professionally Qualified Social Worker Scale. The first twelve months of the Claimant's employment was to be probationary. The contract of employment also reserved the rights to the Respondent to extend the probationary period "*in certain instances*" and to terminate the Claimant's employment at any stage during the probationary period or at the expiry thereof and to pay in lieu of notice being served. These instances were not specified in the contract of employment. Notice of termination of contract by either party during the probationary period was expressed to be one month and it was further expressed in the contract of employment that any dismissal would be carried out in accordance with the provisions of the Respondent's Disciplinary Period, unless it occurred during the probationary period.

After securing employment with the Respondent, the Claimant was provided with a document entitled "*Social Work Policy*", being the referral and procedural policy for the Respondent's social work services, designed to ensure a consistent approach to social work activities, in line with legislation and best practice.

In the course of her employment with the Respondent, the Claimant's probationary period was extended on the 25<sup>th</sup> August 2006 to the 4<sup>th</sup> December 2006. Following a meeting on the 10<sup>th</sup> November 2006, the Claimant was informed that her position as social worker was not being approved for permanency and she was afforded one months notice of termination of her employment with the Respondent, with effect from 10<sup>th</sup> November 2006.

### **The Claimant's Case**

The Claimant's case, as made out in Form T1-A was that, in the first instance, her probation period was unfairly extended, she having been subjected to a mediation process for undefined reasons. In the second instance, it was contended that she was unfairly dismissed in that, there was no act or omission by her, that warranted dismissal and disciplinary procedures were not followed.

In disputing the claim, the Respondent in its T2 contended that, mediation was a process, which was suggested to the Claimant with a view to resolving certain issues prior to making any decision following her probationary period and that the Claimant had willingly entered the process which

had to be completed in its entirety, prior to making a decision and which due to circumstances beyond the control of either party was somewhat delayed. It was further contended by the Respondent that the Claimant was regularly advised over her probationary period of matters, which needed to be attended to, standards, which had to be reached, and rules and regulations regarding policy, which had to be adhered to and that despite regular requests from the Respondent and notwithstanding assurances from the Claimant, the Claimant failed to attend to the matters requested, reach the standards required or adhere to the rules and regulations and that at all particular times, the Respondent acted in an appropriate and acceptable standard towards the Claimant and that all steps were taken to facilitate her in the course of her probationary period.

## **The Evidence**

The Tribunal heard evidence from the Claimant's supervisor who was based in Galway. At all material times, he was the Respondent's Regional Manager for a geographical area, encompassing three health board areas and extending from Donegal to North Tipperary.

Essentially his supervision of the Claimant revolved around a series of monthly supervision sessions, or informal meetings, with no particular agenda or defined structure in many instances.

On his own evidence, he acknowledged that the structure of the Respondent's organisation was such that the Claimant had to work very much on her own initiative, however it does appear that within one month of the commencement of her employment with the Respondent, the Claimant undertook a series of induction courses, provided by the Respondent over the course of two days in Dublin.

The Claimant's supervisor accepted that, having regard to the specialised nature of the Claimant's role as a social worker within the Respondent's organisation, a reasonable opportunity had to be afforded to the Claimant to develop a proficiency in sign language, as well as an acute awareness and understanding of deaf culture. To this end, the Respondent arranged the provision of sign language classes at a number of venues in Limerick, as well as individual tutoring sessions and at which the Claimant was requested to attend and also to practise sign language on a daily basis.

Whilst it was conceded by the Respondent that the Claimant was initially enthusiastic as regards acquiring proficiency in deaf language, it appeared to the Respondent that such enthusiasm gradually waned, as a result of difficulties encountered by the Respondent in making progress, to the extent that her participation in activities organized to that end ceased, without reference to, or permission from, the Respondent.

To compensate for the Claimant's perceived shortcomings as regards sign language, her Supervisor initially allowed the Claimant, as part of her induction, to utilise the skills of a resource worker employed with her in the Limerick office, as a means of translating sign language. Whilst this was apparently intended by the Respondent as a remedial measure, it was alleged that the Claimant misinterpreted the position somewhat and regarded the resource worker concerned, as her individual personal assistant.

The Claimant for her part testified that she commenced and completed Level 1 Sign Language attaining an "A" grade and attended all courses requested of her and whilst this was accepted by the Respondent, it was stated by the Respondent's Chief Executive Officer, that they would have expected a social worker beginning to learn sign language to have advanced to Level 3 Sign Language within a period one year, as Level 1 was considered extremely rudimentary by him and

would not endow any particular skills. The Clinical Nurse who also testified on behalf of the Respondent before the Tribunal stated that whilst the learning of Level 1 Sign Language is effectively scheduled for one year, by utilising same on a daily basis, proficiency to that degree could be attained in as little as three months.

It also appears that some form of a breakdown of communication, or perhaps even a personality clash, developed between the Claimant and her colleague, the resource worker referred to above, such that the Supervisor had the Claimant attend at sessions in the Galway office to attend sign language and cultural classes and as a means of defusing tensions between the Claimant and the resource worker concerned, once such had become apparent to him.

For her part, the Claimant testified that her difficulties in achieving proficiency in sign language resulted in the exclusion of her, by work colleagues in the Limerick office, from social interaction and that any specific personality clashes were wholly separate and apart from her attainment of the requisite professional standards and performance.

Apart from the issue of sign language, as the Claimant's employment progressed, the Respondent apparently also began to have misgivings as regards the Claimant's dealings with her clients, concerning an apparent non-participation and non-interaction with persons referred to their services.

Though lacking some particularity, specific examples to which reference was made in the course of evidence by the Supervisor, concerned a failure to adhere to appointments, an apparent lack of understanding of deaf culture, a failure to engage adequately with clients on a personal basis, or to familiarise herself appropriately with the individual circumstances and details of the persons concerned.

In addition, as regards the Claimant's professional development, the Supervisor gave evidence that in addition to the casework she would have inherited on the commencement of her employment, he had expected her to network with other professionals and to source her own casework and that as far as he was concerned, she was slow to make progress in developing such matters and in developing outreach services in the catchment area and whereas proposals were often mooted by the Claimant, such invariably failed to materialise, as far as the Respondent was concerned.

The Claimant for her part testified that her case load did expand and that at the end of the year she had more cases than she inherited. In response to this, the Respondent's Supervisor testified that the Claimant didn't reach the mark of the previous social worker. As regards referrals, the Claimant testified that as there was no formalised system in place for referrals of cases to her, such were not filtering through to her initially and also that she was not allowed to liaise with other social workers in other geographical areas.

Furthermore, the Respondent was also aggrieved at the Claimant's perceived failure to make any attempt to use sign language at team meetings which involved two deaf members of staff. As the Supervisor testified, as far as the Respondent was concerned, the Claimant "*didn't get the [Respondent's] communication strategy.*"

The Supervisor's evidence was that initially he endeavoured to deal with such concerns at a team level in the context of monthly team meetings, where the individual roles and responsibilities of the participants, were outlined, demarcated and emphasised repeatedly, for the purposes of ameliorating any misunderstandings that had arisen. It appears that as far as the Respondent

was concerned, occasionally supervisory sessions involving the Claimant, were of inordinate duration and quite frustrating for the Supervisor. On the other hand, in so far as the Claimant was concerned, it would appear that certain supervision sessions were rushed and that there was inadequate opportunity for issues to be dealt with, a fact which appears to have been acknowledged by the Respondent and is recorded in the document entitled "*Strategy For Work Performance*", to which further reference will be made.

The Supervisor's evidence was that ultimately matters came to a head, principally as a result of the Claimant's less than satisfactory work performance and personality differences between the Claimant and other members of the team employed with her in the Limerick office, such that a probationary review was scheduled for the 6<sup>th</sup> June 2006, attended by the Claimant and her Supervisor. The evidence of the Claimant on the other hand was that prior to the 6<sup>th</sup> June 2006, the notion of a probationary review had emanated from herself, as by that time, she had never been subjected to any probationary review, nor had she received any feedback from the Respondent that the performance by her of her professional duties was being assessed as inadequate. No records of any "*supervisory sessions*" prior to June 2006 were introduced into evidence before the Tribunal. The Supervisor, when recalled to give evidence, for his part testified that the Claimant had not called the meeting of the 6<sup>th</sup> June 2006.

In her evidence, the Claimant also testified that right up until November 2006, she was of the understanding that the only issue of concern, related to her "*fit*" with the team, hence the mediation process. In particular, the Claimant also testified that at the meeting on 6<sup>th</sup> June 2006, she was never told that she was failing to meet such professional standards as were required of her, or that her professional duties were being discharged in such a fashion, that a continuance of same might lead to a failure on her part to successfully complete her probationary period.

A document, which on its face, appeared to reflect the minutes of the meeting was opened to the Tribunal in the course of evidence and in respect of which, the Supervisor also testified that the Claimant had been provided with a copy of same, on the 16<sup>th</sup> June 2006 for her approval.

As appears from the minutes, a number of matters appear to have been discussed at that meeting and as a result of same, it was contended by the Respondent that it was agreed that a process of mediation be established to resolve inter personal issues concerning the team. Whilst there is some reference therein to the Supervisor apparently asking for improvements in the area of caseload, there is also reference therein to some expansion having been achieved by the Claimant. In the Claimant's favour it has to be said that the minutes do not reflect any stark picture of incompetence or professional failings in the Claimant, over and above what might be expected of a normal supervisory session with a probationary employee. On the other hand in favour of the Respondent, the Tribunal noted the demeanour of the Supervisor in the course of his evidence, as well as his stated conciliatory approach to procuring improvements in professional standards and such matters, particularly given that the Claimant was undergoing a probationary period.

It is however to be particularly noted that the minutes of the meeting of the 6<sup>th</sup> June 2006, do record that it was agreed that the mediation process should be looked at by the Respondent as a priority, as the Claimant's probationary period was to end in mid September. There was no suggestion in the minutes of that meeting, that an extension of the Claimant's probationary period was being mooted, in respect of non-attainment of the requisite professional standards of performance.

Thereafter it appears that whilst some steps were put in train by the Respondent to engage the services of a mediator, through a combination of factors, such as the Supervisor's intervening

vacation and unforeseen illness of the mediator concerned, such a process did not commence in any substantive fashion until well into the month of August 2006.

By that time, the Supervisor had recommended to the Respondent's Human Resources Manager on the 11<sup>th</sup> August 2006, an extension of the Claimant's probationary period until Monday, 4<sup>th</sup> December 2006, as a result of the delay in establishing the mediation process which had entailed the development of a vacuum surrounding the making of decisions concerning contracts of employment and so that the Claimant's work performance could also be monitored in a structured fashion, as a strategy to that effect had been put in place. The Claimant was notified of this development by letter dated the 25<sup>th</sup> August 2006.

In cross-examination the Respondent's supervisor, by reference to the "*Strategy For Work Performance*", testified that as far as he was concerned, such amounted to a specific communication with the Claimant clearly explaining to her, that if she did not attain a specific and verifiable performance standard, her position was at risk. The Tribunal does not accept that a reasonable employee, or the Claimant, could have had such an understanding, having regard to the contents of that document. The evidence of the Claimant was that at no time was she challenged by her Supervisor as to her professional capabilities, or competency and that it was an initiative of the Claimant in advance of the monthly supervision meetings, to identify particular areas for which she required development and training

It appears that a series of pre-mediation sessions took place between the 10<sup>th</sup> and 14<sup>th</sup> August 2006, followed by a mediation session involving five employees on the 16<sup>th</sup> August 2006 resulting in the arrival at an agreement between the parties concerned. The mediation process concluded with a final meeting on the 16<sup>th</sup> October 2006.

It is common case that the Claimant participated fully in mediation and such dispute resolution mechanism, was to all intents and purposes, successful in resolving the inter-personal grievances that had developed amongst some of the personnel in the Respondent's Limerick office, involving the Claimant.

Separate and apart from team meetings, as regards the Claimant's supervisory sessions, it appears that as at early November 2006 and following the probationary review in June 2006, the Claimant had further meetings with her Supervisor on the 10<sup>th</sup> August, 27<sup>th</sup> September and 19<sup>th</sup> October, 2006.

The Claimant in her evidence testified that, some time before she went to Belfast on the 19<sup>th</sup> August 2006, she had a meeting with her Supervisor, at which she alleged, she was informed by the Supervisor that her contract would be made permanent, as a result of the work which she was by then undertaking with the Respondent. The Claimant testified that in such circumstances she was quite surprised to receive the letter of the 25<sup>th</sup> August, extending her probationary period "*so as to allow for her performance to be monitored and managed in a structured and planned manner*", as her Supervisor had allegedly told her at the meeting that "*everything would be fine*". The Claimant testified that it was by the receipt of that letter, she first learned of the extension of her probation period, let alone that such was being mooted by the Respondent.

It is to be noted that neither the Respondent's Strategy For Work Performance, nor the Respondent's notes of the meeting with the Claimant on the 10<sup>th</sup> August 2006, disclose any mention or reference to an extension of her probationary period. The Claimant further testified that when she queried the contents of the letter of the 25<sup>th</sup> August with her Supervisor, she was

assuaged and advised that *“those are just words and don't mean anything”* and *“this is a process [mediation] which we just need to conclude”* The Supervisor, when recalled to give evidence, stated that the Claimant's recollection of the contents of that meeting in August were incorrect and that he had not told the Claimant that her contract would be renewed.

The Claimant's evidence was that all times she continued working away as she had always done and at all times she expected to be made permanent with the Respondent, particularly as the process of mediation was proving to be a success.

When it was put to the Claimant, in the course of her cross-examination, by Counsel for the Respondent, that it would have been apparent to her, from the contents of the document entitled *“Strategy For Work Performance”* provided to her by the Respondent on the 10<sup>th</sup> August, that significant issues, concerning her work related performance were manifest, the Claimant essentially testified that she considered the document, as nothing more than what might reasonably arise, as a result of ongoing supervisory sessions, for a probationary employee.

It appears that following a discussion in early November between the Supervisor and a Clinical Nurse, specialising in Mental Health and Deafness, which cemented his feelings, the Supervisor determined in consultation with the Respondent's Chief Executive Officer, that the Claimant ought not to be offered a permanent contract with the Respondent.

The reasons proffered in evidence by the Respondent were that essentially no substantive improvement in the Claimant's performance was apparent, nor had an awareness or insight as to her perceived shortcomings, been demonstrated by the Claimant. It was considered that the caseload summary which was presented at the September session was incomplete and lacking in the requisite detail that would aid discussion and support. At that meeting the Respondent requested the Claimant to ensure that she was fully prepared for the October session.

It was alleged by the Respondent that for the October session the Claimant was not adequately prepared, or possessed of sufficient detail concerning her caseload. The Supervisor testified that he outlined to the Claimant his extreme unhappiness at her complete lack of advance preparation for the October session, that he did not have any handle on who the Claimant was working with, or the nature of her work, with a few exceptions and that no coherent evidence of professional social work involvement was produced by the Claimant. Projects which had been mooted earlier concerning the organisation of a fashion show, preparation of a newsletter for schoolchildren and sourcing of an outreach premises had not been progressed to any meaningful degree. On cross-examination, the Claimant denied that she had been tardy in fulfilling projects and testified that her contract had been terminated before she had a reasonable opportunity of bringing the fashion show to fruition and that at the time her employment was terminated, very substantial progress had been made by her as regards the development of the outreach facility.

Furthermore, as far as the Respondent was concerned, there had been other issues in the intervening period concerning the Claimant's repeated failure to complete mileage claim forms correctly and to commence Level 2 sign language classes. In respect of the latter, the excuse proffered by the Claimant was, that she was unable to afford the sum of €150, required to pay for such classes and for which she would have been reimbursed by the Respondent. In response to this, the Supervisor removed the said sum from petty cash, gave it to the Claimant and asked her to pay for the course, as she would otherwise have lost her place on it. In cross-examination, the Claimant essentially agreed with the Supervisor's account of events in this regard and testified that, notwithstanding she was in receipt of a substantial salary from the Respondent at the time, she was nonetheless unable

to personally afford to expend the sum of €150 during the week concerned.

The Clinical Nurse referred to above also gave evidence to the Tribunal on behalf of the Respondent. He was based in Donegal and as part of a mental health team with a national remit, would travel around the country with other experts to see deaf and hard of hearing persons and offer advice and support to social workers dealing with such persons.

It was the practice that he would be in Limerick at intervals of every four to six weeks and as there is apparently such a large demand for the services of the mental health team, the practice that ought to pertain for them on their visits, was that principally the social worker concerned, would organize a schedule of clients for the team to see, having first obtained a history of the persons concerned, or having reviewed same. In so far as the Claimant was concerned, the Clinical Nurse gave evidence that whilst the team's initial meetings with the Claimant were positive, they deteriorated dramatically, to the extent that the mental health team were unable to maintain any confidence in the Claimant.

Specific examples to which reference was made in the course of evidence concerned the Claimant's alleged failure to organize client lists, her failure to inform the mental health team of cancellations, her endeavours to have the mental health team see other people at short notice with attendant delays for the team and the people scheduled for appointments, her failure to support clients appropriately and failing to adequately inform herself of the individual details of clients. In particular, it was alleged that notwithstanding the mental health team were part of the Respondent, the Claimant misinterpreted her obligations of confidentiality to the extent that relevant information concerning clients was not provided to them.

Furthermore, the Clinical Nurse gave evidence of how, in early November 2006, having travelled from Donegal, the team was utterly flabbergasted to discover that nothing whatsoever had been organized by the Claimant in respect of a meeting, such that they were obliged to spend the first hour and a half trying to get their bearings. In his own words, the situation was described as being "*an absolute shambles*" and having regard to the constraints imposed on the team in providing the service on a national basis, consideration was afforded to no longer visiting Limerick, as it was felt that such occurrences were doing more harm, than good.

As a result of this occurrence, the Clinical Nurse brought his concerns and those of the other expert members of the mental health team to the Claimant's Supervisor, following the November episode. The Claimant testified that what occurred at the mental health team meeting in early November 2006 was not as described by the Clinical Nurse. The Claimant's recollection was that through circumstances outside her control, clients may have cancelled their attendances on the morning of that scheduled meeting and that she endeavoured to organize other clients to attend that day, without success.

For her part the Claimant testified that that on no occasion did a mental health clinic fail to proceed and on cross-examination, the Clinical Nurse, whilst acknowledging that no complaint was ever made to him by a client, concerning the Claimant, insisted that the difficulties encountered by the mental health team with the Claimant were organisational in nature. The Chief Executive Officer testified on cross-examination that whilst the Respondent never received any formal complaint from clients concerning the Claimant, he was of the opinion that persons tended to "*vote with their feet*" and referred to an increase in workload after the Claimant's departure.

On the 7<sup>th</sup> November 2006, the Claimant e-mailed her Supervisor with an agenda for their regular



supervisory session which was scheduled for the 10<sup>th</sup> November 2006. As part of the agenda, the Claimant identified a need for feed back about her probation period. In her evidence, the Claimant testified that the reason for this was that she had a desire for some certainty in relation to the matter and also that none of the Respondent's servants or agents, had informed her at any stage of her probationary period, that the termination of her employment was being contemplated. In this regard, the notes of the Respondent's Supervisor also recount how, at the meeting of the 12<sup>th</sup> September, the Supervisor apparently told the Claimant that "*we would not be discussing probation until after mediation had finished*" and how at the meeting on the 19<sup>th</sup> October, he "*informed her again that I was not prepared to discuss probation until improvement*" was demonstrated.

In an e-mail of the 9<sup>th</sup> November 2006, the Claimant was advised by her Supervisor, that he had asked the Respondent's Human Resources Manager to be in attendance for the "*supervisory session*" on the 10<sup>th</sup> November, "*as part of the probation process.*" The Claimant gave evidence that the content of the e-mail struck her as kind of odd. She testified that she didn't know whether the purpose of same was to facilitate her signing of papers for permanent employment with the Respondent, or what, for that matter, as the Human Resources Manager had never previously attended any of the supervisory meetings, which this was to be, as far as she was concerned.

In cross-examination, the Supervisor admitted that the Claimant would not have been aware, going into the meeting on the 10<sup>th</sup> November what was envisaged for her by the Respondent, although he went on to express the opinion that, when such news was relayed to her at the meeting, he didn't think that, she was unduly surprised. The Claimant testified that at the meeting she was both surprised and upset on discovering that her employment was to be terminated.

The Respondent's Human Resources Manager testified that, at the meeting on the 10<sup>th</sup> November, she informed the Claimant that the purpose of the meeting was to inform her that she was not being recommended for permanent employment with the Respondent, as a result of her failure to "*fit*" with the organisation and an inability to perform the role as social worker for the Respondent, in a single handed fashion, on her own initiative. It was alleged by this witness that on learning of this development, the Claimant had expressed the view that the period of twelve months for which she had worked was not of sufficient duration to allow her to "*fit*" into such a specialised area of work, having regard to her ethnic and cultural background. The Claimant testified that when she requested reasons as to why her employment was being terminated, she was informed that a letter to that effect would issue in due course.

By letter dated the 13<sup>th</sup> November 2006, the Claimant was notified in writing that her position as social worker was not being approved for permanency and recorded that she had been given one months notice of termination with effect from 10<sup>th</sup> November 2006. Whilst the Claimant denied receiving such correspondence, by a letter dated the 16<sup>th</sup> November 2006, the Claimant thanked the Respondent for the opportunity of working with it, which had been a "*tremendous learning experience*" for her.

The Claimant ceased working with the Respondent on the 23<sup>rd</sup> November 2006 and there was apparently no further communication from her to the Respondent again, until receipt of the Employment Appeals Tribunal Form T1-A in the month of April 2007. Nonetheless, it is appropriate to mention that, by letter to the Supervisor dated the 12<sup>th</sup> January 2007 and apparently from an entity entitled "*The Communications & Guidance Institute*" with an address in Clara, County Offaly, the Respondent was advised that, the Claimant has passed an interview process for

the position of social worker with that “*organisation*” and a reference on the Claimant was sought from the Respondent. By letter dated the 3<sup>rd</sup> February 2007, the Respondent reverted confirming that during her employment with it, the Respondent “*carried a varied caseload and was committed and enthusiastic in her work with all clients. She also liaised with other agencies on behalf of clients and was involved in developing new ideas and programmes with clients. Linda was also an active participant at all team meetings and contributed to the overall planning and development of the service.*” However, the evidence before the Tribunal disclosed that the letter of the 12<sup>th</sup> January 2007 was not in fact what it seemed and was apparently a device used by the Claimant to deceive the Respondent.

## **Conclusions**

Notwithstanding the apparently eminent academic qualifications possessed by the Claimant and her apparently extensive past history of diverse practical experience and achievement as a social worker both in Ireland and abroad, the Tribunal is satisfied on the totality of the evidence adduced at the hearing before it, that the Respondent, honestly and reasonably believed, that the Claimant was incapable of performing the very specialised tasks required by it of her, in the capacity for which she was engaged, namely as a social worker with deaf and hard of hearing people, regardless of whether such was more apparent, than real established fact, in this instance.

In fairness to the Claimant, although it has to be acknowledged that she participated fully in the mediation process and contributed to the resolution of the inter personal difficulties which had arisen in the Limerick office, the Tribunal also accepts that the Respondent honestly and reasonably perceived, an apparent lack of application by the Claimant to the learning of sign language and also an apparent demonstration of a lack of integration and communication with deaf people, together with an awareness or understanding of their culture.

In that regard and in so far as the Claimant alleged that her probation period was unfairly extended, having been subjected to a mediation process for undefined reasons; on the evidence of the Respondent’s Chief Executive Officer and the Claimant’s Supervisor as to the reasons for the extension of the Claimant’s probationary period, the Tribunal does not accept that the Claimant’s probation period was unfairly extended, nor that the Claimant was subjected to a mediation process for undefined reasons, although the Tribunal does not accept that the means and manner by which the Respondent had decided to extend the Claimant’s probationary period, was first communicated adequately to the Claimant. Nevertheless, the preponderance of the evidence and even that of the Claimant, overwhelmingly discloses the reasons for the commencement of the process of mediation.

The provisions of the Unfair Dismissals legislation require the Respondent to demonstrate on the balance of probabilities that the Claimant’s dismissal was fair in all of the circumstances. In the first instance, the Tribunal is satisfied that the reasons proffered to it by the Respondent, for the dismissal of the Claimant, were in fact the reasons for her dismissal and that such were substantial reasons.

However on the totality of the evidence, the Tribunal has not been satisfied by the Respondent, on the balance of probabilities, that the Claimant received fair, let alone any, notice, that the question of her dismissal, for an allegedly inherent inability to perform her professional duties, to a particular defined standard, as required by the Respondent, was being considered by it, such that the Claimant was afforded an adequate opportunity of being heard in her defence, thus rendering the dismissal of the Claimant by the Respondent, procedurally unfair. To all intents and purposes the

decision of the Respondent to dismiss the Claimant was made in advance of the meeting of the 10<sup>th</sup> November 2006, and presented to her as a *fait accompli*.

In addition, having regard to the structure of the Respondent's organisation, the relatively intermittent (albeit regular) nature of supervision, due to work and time constraints (and for which no blame attaches to the Respondent) and the fact that the Claimant was required to work to a considerable degree on her own initiative, in a specialised area of expertise, which was relatively unfamiliar to her, the Tribunal was not satisfied, on the balance of probabilities, that as a matter of appropriate procedure, it was adequately communicated by the Respondent to the Claimant, prior to the making of the decision to dismiss her, the consequences for the Claimant, of not remedying, within an appropriate timescale, the perceived shortcomings in her attainment of the expected standards.

Of course it is acknowledged that from the Respondent's perspective, the findings of this Tribunal may be of particularly cold comfort to it, as having regard to the provisions of section 3(1) of the 1977 Act, had it chosen to dismiss the Claimant for the stated reasons, during a probationary period within one year of the commencement of her employment, the Claimant would have been excluded by the provisions of the unfair dismissals legislation from claiming redress thereunder. However be that as it may, by having unilaterally extended the Claimant's probationary period outside that timeframe, albeit for good and commendable reason and as indeed was its entitlement, the Respondent voluntarily assumed the risk, that any decision to dismiss the Claimant might be reviewable by this Tribunal.

## **Redress**

In the circumstances of this case and in the subsequent events which have happened, the Tribunal has unanimously determined that the remedies of reinstatement, or re-engagement, would be neither feasible, or appropriate, in this instance.

Accordingly it follows that an award of compensation to the Claimant is the most appropriate redress for her.

In the course of her employment with the Respondent, the Claimant's gross weekly wage was in the order of €1,019. The evidence of the Claimant disclosed that after the 10<sup>th</sup> December 2006, she was out of work for a period of at least twelve weeks, until she obtained a locum employment with the Health Service Executive, as a social worker based in Dublin, specialising in the areas of child protection and drug addiction, in respect of a period from March to August 2007. Her salary in that position was approximately €49,000 per annum and to that end, the Claimant gave evidence that she was obliged to reside in County Westmeath. The Claimant testified that her appropriate salary scale when leaving the Respondent's employment was €53,907 and that for the period of five months, she had suffered a pro rata salary difference.

In August 2007, the Claimant obtained employment with the Probation Service. Her salary in that position was approximately €55,000. Although the Claimant resides in Sixmilebridge, County Clare and her life is centred around Limerick, she was assigned by the Probation Service to Dublin initially from August to November 2007. From November 2007 onwards, the Claimant has been permanently assigned to Limerick.

The Claimant testified that as a result of her dismissal by the Respondent she was obliged to maintain rented accommodation in County Westmeath and incurred additional transport costs by

having to work in Dublin. In addition, the Claimant alleged that she has been deprived of a full increment on Professionally Qualified Social Worker Scale, by reason of a failure on the part of the Respondent to apply Point 7 of the relevant salary scale to her situation.

In determining the amount of compensation payable by the Respondent, the Tribunal is obliged to *inter alia* have regard to the extent (if any) to which the conduct of the Claimant (whether by act or omission) contributed to the dismissal. In this regard, the Tribunal is satisfied that the Respondent has discharged the burden upon it of establishing this and in all of the circumstances pertaining to this case, the Tribunal unanimously determines that the Claimant substantially contributed to her dismissal.

Therefore, the Tribunal determines, that it is just and equitable, having regard to all the circumstances, to award the Claimant the sum of €3,500 compensation by way of redress for unfair dismissal.

The Tribunal is satisfied that the Claimant was afforded her notice entitlement and in such circumstances, the claim pursuant to Minimum Notice and Terms Of Employment Acts, 1973 to 2001, fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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