

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD684/2008

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P McGrath

Members: Mr M Murphy
Mr J Moore

heard this claim at Navan on 13th November 2008

Representation:

Claimant: In person

Respondent: In person

The determination of the Tribunal was as follows:

The Tribunal has considered the submissions made by the parties. The facts of the case are as complicated as any heard by this Tribunal. The parties have been unable to establish concrete or corroborative evidence relating to conversations and understandings had between parties. What is common case is that the claimant had been working on behalf of the employer at a particular venue in Dublin for upwards of 14 months. For personal reasons she took an unpaid leave of absence, the length of which was largely open-ended. This started at the beginning of March 2008. By the middle of April the claimant was ready to come back and for some reason she was not rostered back onto her old shift at the venue of her choice.

There ensued a period of telephone communications between the claimant and her line manager, and there is conflict on the content of those conversations. Generally though it does seem the claimant was only interested in the venue of her choice and the employer only had other positions available, none of which were suitable to her particular needs.

In June of 2008 two days of emails solidified the position. The claimant is only prepared to take a position in the venue she was previously employed in and, as that venue is unavailable, the claimant is invited to take her P45.

This communication is tantamount to a dismissal which the Tribunal deems to be unfair in the circumstances which are known to the Tribunal. The claimant has four years of service with the

company and should be entitled to have the company's position on alternative work and/or unavailability of work clearly made known to her. For unknown reasons the claimant was not being informed of where she stood.

Determination:

Having determined that an unfair dismissal has taken place, the Tribunal makes the following order:

1. The Tribunal directs that the employee be re-engaged immediately by the respondent. The Tribunal accepts that the employer cannot place the claimant into her requested employment, but the employer has indicated suitable alternative employment is available as and from the 14th November 2008. The Tribunal accepts that the claimant may not want to take up this employment but finds that the employer's obligation into the future has been fulfilled.
2. The Tribunal directs that the sum of €3,380.00 (three thousand, three hundred and eighty euro), being 20 weeks loss of earnings accrued since the middle of June 2008, is to be paid on or before 21st November 2008 by cheque to the claimant's address as per the T1A forms submitted.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)