

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

UD908/2008

Employee

UD909/2008

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. B. Kealy
Mr. J. Dorney

heard this claim at Dublin on 4th December 2008

Representation:

Claimant(s): Mr. John Connellan, Solicitor, Carley & Connellan, Solicitors, 10 Anglesea Street, Dublin 2

Respondent(s): No attendance by or on behalf of the respondent

The determination of the Tribunal was as follows:-

Determination on Preliminary Issue

The solicitor for the claimants outlined to the Tribunal under Section 27 (1) of the Safety, Health and Welfare at Work Act 2005 as follows: -

“In this section “penalisation” includes any act or omission by an employer or a person acting on behalf of an employer that affects, to his or her detriment, an employee with respect to any term or condition of his or her employment”.

The claimants made a complaint to their employer regarding lack of rest breaks. Lack of rest breaks may constitute a breach of Health and Safety. The claimants are entitled to bring a claim

because they were dismissed and compensation should follow.

Under subsection 27 (4) of the Safety, Health and Welfare at Work Act 2005

“The dismissal of an employee shall be deemed, for the purposes of the Unfair Dismissals Acts, 1977 to 2001, to be an unfair dismissal if it results wholly or mainly from penalisation as referred to in subsection (2)(a)”

“suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2001), or the threat of suspension, lay-off or dismissal.”

The solicitor for the claimants stated if the dismissal resulted from penalisation then it is deemed to be an unfair dismissal.

The Tribunal discussed at length the case put forward by the claimants’ solicitor. The Tribunal came to the conclusion it does not have jurisdiction to hear the case, as under the Unfair Dismissals Acts, 1977 to 2001 the claimants must have the requisite service of one year. The Safety, Health and Welfare at Work Act 2005 Section 27 is silent regarding the length of service.

Under Section 28(1) of the Safety, Health and Welfare at Work Act 2005: -

“Without prejudice to section 27(4) an employee may present a complaint to a rights commissioner that his or her employer has contravened section 27”.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

