

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee
- claimant

CASE NO.

UD779/2008
WT320/2008

Against

Employer

- respondent

under

ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly Bl

Members: Mr M. Kennedy
Mr B. Byrne

heard this claim at Dublin on 18th November 2008

Representation:

Claimant(s) :

Oisín Scollard BL instructed by Hughes & Liddy, Solicitors, 2 Upper
Fitzwilliam Street, Dublin 2

Respondent(s) :

Sarah Berkeley BL instructed by Patrick F. O'Reilly & Co., Solicitors, 9-10 South Great
Georges Street, Dublin 2

The determination of the Tribunal was as follows:-

Preliminary issue

Counsel for the respondent outlined that the claimant in this case was employed as a youth reach manager, which is classified as an "officer" of the CDVEC. This excluded the claimant from bringing a claim under the Unfair Dismissals Acts, 1977 to 2001.

The respondent's head of HR gave evidence that they have approximately four thousand employees the majority of which are office holders. In regard to officers, the only distinction is on the basis on which they are entered in to the superannuation scheme, which categorises members as office

holder or employee. Participation in the superannuation scheme is mandatory. The claimant's contract was a generic contract provided by the Department of Education and Science. That Department informed the CDVEC that youth reach managers are classified as office holders. He confirmed that the claimant's contract was a fixed purpose contract.

The Tribunal considered written submissions furnished by both parties.

Determination

The Tribunal finds by majority, with Mr B. Byrne dissenting, that the claimant was an officer of the CDVEC.

According to Section 2 (1) (j) of the Unfair Dismissals Act, 1977 "officers of a health board, a vocational education committee established by the Vocational Education Act, 1930, or a committee of agriculture established by the Agriculture Act, 1931" are excluded from taking a case of unfair dismissal. Accordingly the Tribunal has no jurisdiction to hear this claim under the Unfair Dismissals Acts 1977 to 2001 and as a result, therefore has no jurisdiction to hear the claim under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

