

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
Employee

CASE NO.  
UD501/2008  
MN455/2008

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. P. Hurley

Members: Mr. T. Gill  
Dr. A. Clune

heard these claims in Limerick on 28 November 2008

Representation:

\_\_\_\_\_

Claimant(s):  
Mr. Andrew D'Arcy, Andrew D'Arcy & Company, Solicitors,  
First Floor, The Mill, Glentworth Street, Limerick

Respondent(s):  
No attendance or representation

The determination of the Tribunal was as follows:-

Attending alone, the claimant's representative said that he had appeared before the Tribunal on the afternoon of the previous day (Thursday 27 November 2008) to make a postponement application for which he had the consent of a solicitor for the respondent. As the postponement application had not been granted on 27 November 2008 the claimant's representative said that he was now renewing the application and that he wanted to outline the reasons for it.

The claimant's representative told the Tribunal that the claimant had been living in Australia, had wished not to proceed with his case but was now having second thoughts. Also, it was only a few weeks since the claimant's mother's house had been destroyed by fire. The claimant now found himself in a difficult position. Furthermore, the respondent's representative was in difficulty because he had first thought that the claimant was not proceeding with his claim and had subsequently consented to the case being postponed.

Asked what had changed between 27 November and 28 November, the claimant's representative said that he had not been able to contact the respondent's representative who had been out of the office all of the afternoon of 27 November and had not been contactable by phone. It appeared that the respondent's representative had assumed that the postponement application made on 27 November would be granted. The claimant's representative had tried to contact the respondent's representative on 28 November. The claimant's representative was now before the Tribunal without the claimant.

Asked why the Tribunal ought not strike out the claim, the claimant's representative, contending that there were extenuating circumstances, reiterated that the claimant had been out of the country and that the claimant's mother's house had burned down. The representative said that he had spoken to the claimant before the postponement application on 27 November but that he had been unable to contact the claimant after that. He had sent the claimant a detailed letter.

Asked what prevented the claimant being present before the Tribunal on 28 November, the claimant's representative did not know of anything apart from the fact that he had told the claimant that he was seeking a postponement.

**Determination:**

Having considered what it had heard, the Tribunal found that nothing had prevented the claimant from being present (despite the best efforts of his representative). The Tribunal dismisses the claims under the Unfair Dismissals Acts, 1977 to 2001, and under the Minimum Notice and Terms of Employment Acts, 1973 to 2001. No professional censure attaches to the claimant's representative.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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