

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

- *claimant*

CASE NO.

MN159/2008

UD163/2008

against

Employer

- *respondent*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Flanagan BL

Members: Mr F Cunneen
Mr O Nulty

heard this claim at Dundalk on 9th May 2008 and again on 9th September 2008.

Representation:

Claimant(s): Mr Conor Breen, McDonough & Breen, Solicitors, Distillery House,
Distillery Lane, Dundalk, Co Louth

Respondent(s): On the first day: Ms Catherine Fee, Catherine Fee & Co., Solicitors,
Unit 1, Queens Business Centre, Earl Street, Dundalk, Co. Louth

On the second day: Not present or represented.

The determination of the Tribunal was as follows: -

Background:

There had been an appearance by both parties on the first hearing date at which the Tribunal was advised that the case had been settled and an application was made for the case to be postponed on the basis that the claim was being withdrawn by the claimant in four weeks time unless the Tribunal was advised to the contrary in the meantime. On this basis the Tribunal granted the postponement.

Ultimately the case was re-entered before the Tribunal. On the resumed date there was no appearance by or on behalf of the respondent.

Claimant's Case:

The claimant gave evidence of dismissal and loss and confirmed his date of commencement and termination of employment by the respondent and his total weekly gross remuneration. The claimant stated that he had applied for many positions but had not been successful, as he had not received a reference from the respondent. This had a huge bearing on his health and in March 2008 the claimant commenced receipt of illness benefit for a period of six months.

Determination:

Neither the respondent nor his representatives appeared for this case on the second day. The Tribunal is satisfied that the respondent was properly notified of the hearing upon the resumed date. As the respondent had failed to attend the hearing and discharge the onus placed on him to establish that the dismissal was not unfair the Tribunal applied subsection 6(6) of the Unfair Dismissals Act 1977 and found the dismissal to be unfair.

The claimant gave evidence that he had suffered stress trying to obtain new employment without a reference. The Tribunal is not in the business of awarding compensation for personal injury and can only award compensation for loss occasioned by the dismissal *per se*. The Tribunal does not accept that an employee is as a matter of course entitled to a reference from his or her former employer. However the Tribunal recognises that the failure of a former employer to furnish a suitable reference may be a factor in reducing the former employee's ability to mitigate losses arising from the dismissal such that the quantum of the award for compensation arising out of the dismissal may not be as reduced by mitigation as it might otherwise have been. The Tribunal is satisfied that the application of one of the primary remedies under the Acts, being either reinstatement or reengagement, is inappropriate in the circumstances of this case, having had regard to the failure of the respondent to engage further with the claimant by way of his failure to attend on the resumed date and having had regard to the preference of the claimant for compensation. The Tribunal awards to the claimant the sum of € 9,417-00 under the Unfair Dismissals Acts, 1977 to 2001.

The fact of dismissal having been established, the Tribunal awards to the claimant €438.00, being one weeks' pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)