

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM(S) OF:**

**CASE NO.**

Employee

UD506/2008

RP418/2008

MN 467/2008

WT220/2008

against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001  
ORGANISATION OF WORKING TIME ACT, 1997  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003  
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. Quinn BL

Members: Mr. G. Phelan  
Dr. A. Clune

heard this claim at Limerick on 18<sup>th</sup> December 2008

**Representation:**

Claimant(s) : Ms. Mary McElligott, SIPTU, 4 Church Street, Limerick

Respondent(s): There was no representation by or on behalf of the Respondent

The determination of the Tribunal was as follows:-

**The Factual Matrix**

At the commencement of the hearing, the Claimant's representative notified the Tribunal that the claims under the Redundancy Payments Acts 1967 to 2003 and the Organisation of Working Time Act, 1997 were withdrawn. The claim under the Minimum Notice was dismissed.

The Claimant commenced employment as a cleaner in or about the month of April 2000. Initially he was employed by an entity other than the Respondent. This Third Party was engaged as a provider of cleaning services to industrial facilities. It appears that in or about the month of August 2007, there was a transfer of undertaking, such

that the provision of the Third Party's cleaning services were henceforth assumed by the Respondent. In so far as the Claimant was concerned, there was no break in his service and he continued working in the same premises as theretofore.

The sworn evidence of the Claimant established that on the 30<sup>th</sup> day of April 2008 he received notice of his dismissal from his employment with the Respondent and that his employment ended as at the 2<sup>nd</sup> May 2008. As at the date of termination of his employment, the evidence of the Claimant was that he was in receipt of a gross weekly wage of €468.65, representing 35 hours work at an hourly rate of €13.39.

In the light of the foregoing and in the absence of any evidence from the Respondent to show that the dismissal of the Claimant, resulted wholly or mainly from one or more of the matters specified in section 6(4) of the Unfair Dismissals Act 1977, or that there were other substantial grounds justifying the Claimant's dismissal, the Tribunal, in applying the provisions of section 6(6) of the Unfair Dismissals Act 1977, determines that the dismissal of the Claimant was unfair.

As and from the date of the Claimant's dismissal, the Claimant had made very extensive efforts to secure alternative employment, all to no avail. In addition, he availed of the services of a vocational training provider and attended at courses and was engaged on a work placement programme.

The redress sought by the Claimant was "*reinstatement and compensation*" and in the absence of any evidence from the Respondent, the Tribunal having considered all the available remedies, determines that re-instatement is the appropriate remedy in all of the circumstances of this case.

Accordingly this Tribunal directs that the Claimant be re-instated forthwith by the Respondent in the position he held immediately before his dismissal on the terms and conditions on which he was employed immediately before his dismissal, together with a term that the re-instatement shall be deemed to have commenced on the day of the dismissal.

The Respondent is obliged to treat the Claimant in all respects as if he had not been dismissed and the Claimant is entitled to any arrears of salary from the date of his dismissal to the date of implementation, as well the restoration of all rights and privileges which he might reasonably be expected to have had but for the dismissal, including but not limited to, any increase in the rate of pay as has been applied in the interim.

Sealed with the Seal of the  
Employment Appeals Tribunal

This

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(Sgd.)

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(CHAIRMAN)

