

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee – *claimant*

CASE NO.  
UD1152/2008

against

Employer – *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Taaffe

Members: Mr. D. Moore  
Ms. E. Brezina

heard this claim at Dublin on 26 January 2009

Representation:

Appellant: Mr. Aaron Shearer BL instructed by John McKenna of Woods Ahern Mullen Solicitors, Third Floor Elgee Building, Market Square, Dundalk, Co. Louth

Respondent: Ms. Joanne Hyde of O'Donnell Sweeney Eversheds, One Earlsfort Centre, Earlsfort Terrace, Dublin 2

The determination of the Tribunal was as follows:-

#### **Preliminary Issue**

The representative for the respondent argued that the circumstances of this case are not covered by the Unfair Dismissals Acts, 1967 to 2001; therefore the Tribunal did not have jurisdiction to hear the case.

#### **Respondent's Case**

The respondent's financial director gave evidence. The appellant was offered a position. They withdrew the offer and they went back to the market and recruited a tax consultant with more experience than the claimant.

The respondent was expecting 2009 to be a difficult year. One person has been let go. It is

unlikely that there would be a position for the claimant in May 09. It is a probability that the position will not be there. The environment has changed to the extent that business is down 20%. It is unlikely that bonuses will be paid. Tax compliance staff only got bonuses.

### **Claimant's Case**

The claimant gave evidence. She found the position through a recruitment agency. She was offered the position by email on 17 April 08. It was not intended to be a temporary arrangement. She felt the position offered more long term development than her previous position. A formal offer letter followed, as did a contract of employment. She accepted the offer and signed and returned the contract. She was due to start work on 4 June 2008. When she informed the respondent she was pregnant the offer was withdrawn.

She hoped to work from June 08 to Nov 08. She is currently on maternity leave and will be available for work at the end of May 09.

She took steps to mitigate her loss.

### **Determination**

The Tribunal carefully considered the evidence adduced in this case. Section 1 of the Unfair Dismissals Act, 1977 defines an employee as '*an individual who has entered into or works under a contract of employment*'. The claimant had accepted the offer of employment before the respondent attempted to withdraw it. The Tribunal finds that the claimant had entered into a contract of employment and was therefore an employee under the act.

The respondent did not adduce any evidence to counter the claim that their offer of a position was withdrawn when they learned of the claimant's pregnancy. Under the terms of Section 6 (2) of the Act the claimant is not required to have one year's continuous service to bring a case under the Act. Therefore the Tribunal has jurisdiction to hear the claim.

As there were no grounds to justify the dismissal, the Tribunal finds that it was unfair. The Tribunal makes the claimant an award of €15,000.00. The claim under the Unfair Dismissals Acts, 1977 to 2001 succeeds.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

