

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

against

Employer

CASE NO.

UD887/2008

- *claimant*

- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr J. Browne
Mr. J. Dorney

heard this claim at Wexford on 3rd March 2009

Representation:

Claimant(s) : XXXX

Respondent(s) : Mr. Michael McNamee BL instructed by:
Ms. Kelly Pollard, Legal Advisor, DAS Group, 12 Duke Lane, Dublin 2

The determination of the Tribunal was as follows:-

Preliminary Issue:

A preliminary issue was raised by the respondent's representative in respect of the claimant's lack of sufficient service to take a claim under the Unfair Dismissals Acts, 1977.

Claimant's Case:

The claimant gave evidence. He commenced employment with the respondent in 2000. In November 2006 he informed his employer that he was taking time off to travel to New Zealand. There was no written agreement as to when he would return but he received a letter from the Office Manager to state to the New Zealand authorities that he had a job in Ireland to return to. This letter was required with other legal documentation in order to enter the country. He contacted the respondent on a number of occasions while abroad and on that last occasion and having asked he was offered a position on his return.

When asked, he said that the respondent's witness had told him that there would always be a job for him. He returned to Ireland in November 2007 and a week later resumed work for the respondent until

March 2008.

Respondent's Case:

A Director of the respondent company gave evidence. The claimant left his employment in November 2006 after 6 years. He was given his P45 on November 10th 2006. When asked, he stated that he had no knowledge of the letter written by his Office Manager relating to the issue of a position for the claimant on his return from New Zealand. While on his travels the claimant contacted the witness on a number of occasions. On the last of these occasions he asked if there was a job for him in the company.

When put to him he agreed that he had told the claimant that there would give him a job when he returned from his travels but nothing was promised.

Preliminary Determination:

The Tribunal has carefully considered the evidence from both parties in relation to whether the claimant has sufficient employment in relation to taking a claim under the Unfair Dismissals Acts, 1997. The letter issued by the respondent's Office Manager was not on the respondent's witness's authority. There was no evidence of a discussion between the parties of continuity of service and a P45 had been issued to the claimant. Accordingly, the Tribunal finds that the claimant did not have sufficient one years service to take a claim for unfair dismissal. The claim under the Unfair Dismissals Acts, 1977 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)