

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO.  
UD1079/2008

against  
Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

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

Members: Mr. J. Hennessy  
Mr. T. Kennelly

heard this claim at Limerick on 28th April 2009

#### **Representation:**

Claimant: Mr. Kieran O'Brien, O'Brien Associates, Solicitors, Mill House,  
Henry Street, Limerick

Respondent: No appearance or representation on behalf of the respondent.

#### **The determination of the Tribunal was as follows:**

The claimant first commenced employment with the respondent on 5<sup>th</sup> March 2007. Some two months into his employment the claimant left the employment of the respondent due to problems he had in relation to his rate of pay, the non-provision of payslips and terms and conditions. The claimant commenced employment with a new employer. However, the claimant was approached about returning to work with the respondent and the claimant resumed employment with the respondent for the second time with the respondent on 14<sup>th</sup> May 2007. The respondent summarily dismissed the claimant on the 18<sup>th</sup> April 2008.

#### **Determination:**

The Tribunal is satisfied that the break between the claimant's two periods of employment with the respondent was by way of his resignation.. Continuity of employment is determined under the First Schedule of the Minimum Notice and Terms of Employment Act 1973 as amended. Paragraph 1 of the Schedule provides that continuity of service is broken by dismissal or by an employee voluntarily leaving his employment. Paragraph 6 of the same Schedule provides for circumstances whereby continuity of service shall not be broken where a dismissal has occurred. There is no provision in the schedule for preserving continuity of service in cases where an employee has resigned his position. Accordingly, the claimant's second period of employment with the respondent is a new employment, which lasted from 14<sup>th</sup> May 2007

to 18<sup>th</sup> April 2008. As the claimant does not have one year's continuous service as required under 2(1)(a) of the Unfair Dismissals Acts, 1977 as amended the Tribunal does not have jurisdiction to hear the claim under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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