

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee–**Claimant**

UD1157/2008

against

Employer- **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Fahy B.L.

Members: Mr. T. Gill
Dr. A. Clune

heard this appeal at Loughrea on 28 April and 17 July 2009

Representation:

Claimant:

Mr. Paul Hardy,
SIPTU, Forster Court, Galway

Respondent:

Mr. Alan Ledwith B.L. instructed by
Ms. Kerstin Hau on the first day,
Mr. Tom O'Regan on the second day,
Both of Tom O'Regan & Co Solicitors,
Luckadoon House, 60 Lower Salthill, Galway

The determination of the Tribunal was as follows:

The claimant was employed from 27 August 2007 as a care assistant in the respondents' nursing home. He was dismissed on 10 June 2008 in circumstances where the claimant's position was that as he had been dismissed for trade union activities he was not required to meet the condition of one year's continuous service in order to bring a claim under the Unfair Dismissals Acts. Whilst this arose as a preliminary issue it was necessary to hear the case in its entirety before the Tribunal was able to reach a decision on this preliminary matter.

The claimant was interviewed for the position as care assistant by the then Deputy Nurse Manager (DM) on 8 August 2007. At the conclusion of the interview the claimant was informed of the success of his application and, as he had not provided the names of referees on his CV, he was asked to give the names of two referees. The claimant did this in a form he signed on 26 August 2007. He gave the names of two managers, M1 and M2, from his previous employment. The respondents' position is that a reference request was sent from the nursing home to M1 on 9 August 2007. No reply was received from M1 and no follow up was made with either the claimant or M1

about the lack of a reference for the claimant. It seems that at no stage was any attempt made to contact M2 in this regard. At the time the claimant was employed the probationary period was three months and the claimant was regarded as having successfully completed probation by the time in January 2008 when DM was promoted to the position as Nurse Manager. One of DM's priorities in her new role was to check if references were on file for all staff members. As a result, along with enquiries into several other staff members, a second reference request was sent to M1 on 3 January 2008. Again no reply was received.

In April and May 2008 the claimant was one of three members of staff who represented their colleagues at a conciliation conference. Some time in early May 2008 the first named respondent spoke to a member of management (M3), at the claimant's former employer. Around this time the respondents became aware of the circumstances in which the claimant had left his former employment. The first named respondent then instructed DM to write to M3 with a further reference request form. On 28 May 2008 the Head of Human Resources (HR) at the claimant's former employer wrote to DM stating, *"This is to confirm that the claimant was employed from 27 March 2002 to 27 July 2007 by his former employer."*

I trust this information is satisfactory to your request for a reference for the above named former employee."

In the event the respondents made no further attempt to contact HR. At no stage until 10 June 2008 was the claimant made aware that there was a problem with his employment. On that day he was called to a meeting with DM and the second named respondent and was dismissed. The dismissal was confirmed in a letter of 12 June 2008 citing the lack of a proper reference as the reason for the dismissal.

Determination:

The Tribunal finds that much of the evidence adduced by the respondents in this case is not credible. The respondents failed to insist on references being taken up prior to the employment and allowed the claimant to successfully complete probation. They then sought to follow up the reference in January 2008, again without it becoming a serious issue, such that they never informed the claimant that there was a problem. This situation was allowed to continue until a third request for a reference was made to the former employer in May 2008. No attempt was made to follow up with HR, yet suddenly on 10 June 2008 the claimant was dismissed with no prior warning. It emerged during the hearing that the claimant left his former employment "under a cloud". It is clear to the Tribunal that this was what provoked the dismissal and the Tribunal is satisfied that the dismissal was not due to trade union activity. Accordingly the Tribunal finds that there is no jurisdiction to decide the claim, as the claimant did not have the requisite one-year's continuous service required to bring a claim under the Unfair Dismissals Acts, 1977 to 2007

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)