

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

– *claimant*

CASE NO.

UD1486/2008

MN1438/2008

WT607/2008

against

Employer – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Hurley

Members: Mr. T. Gill
Mr. T. Kennelly

heard this claim at Limerick on 24th July 2009

Representation:

Claimant(s): Mr. Gearóid Howard, Crimmins Howard, Solicitors,
Dolmen House, Shannon, Co. Clare

Respondent(s): No appearance or representation

The determination of the Tribunal was as follows:-

Introduction:

The hearing of this case was scheduled to commence at 10.30am. The Tribunal waited until 11.00am before proceeding with the hearing.

The claimant's T1-A form (*Notice of Appeal*) under cover letter dated 27 November 2008, was received in the Tribunal from the claimant's legal representative on 28 November 2008. A copy of the T1-A form together with a blank T2 form (*Notice of Appearance*) for completion, was sent by the Tribunal by registered post to the named respondent at the address per the information on the T1-A form on 28 January 2009. This registered correspondence did not return to the Tribunal as undelivered.

Opening statement:

The claimant's legal representative told the Tribunal that the claimant had been employed by the respondent under six successive short-term contracts. The respondent, as named on the claimant's

contracts of employment, had been named on the claimant's T1-A form. The address for the respondent had also appeared on the claimant's contracts of employment, and this address had been the location where the claimant had worked. It was this address that had been supplied as the address for the respondent on the claimant's the T1-A form. The respondent's registered number as was stated on the claimant's contracts of employment corresponded with the registered number for the company as it appears on the Companies Registration Office (CRO) website. On the CRO website, an address in Dublin was given for the respondent.

In December 2008, the claimant legal representative also served a copy of the claimant's T1-A form on the Managing Director of the respondent at the respondent's Dublin address by registered post. This registered post was not returned. On the same date, a data protection request in relation to the claimant was also submitted to the respondent. As no reply was received to this request within the time frame as prescribed under the Act, a referral was made to the Data Protection Commissioner. On 6 May 2009, a reply was received from a named Data Protection Officer, of (*Respondent*) Data Protection & Privacy in Belgium. By letter dated 13 May 2009, the claimant's legal representative wrote to this named Data Protection Officer in Belgium and in this letter was stated in part "I trust that you had received correspondence from the Employment Appeals Tribunal in respect of my client's dismissal. The hearing number for my client's application is XXXXX and I confirm that (*named Clerical Officer of the Tribunal Secretariat*) of the Employment Appeals Tribunal is dealing with the matter. His direct telephone number is 01-XXXXXXX. If you intend to defend my client's proceedings I expect that you will arrange to enter the T2/Appeal in early course."

Claimant's case:

In his sworn evidence, the claimant confirmed that he was a Polish national who had been resident in Ireland since September 2004.

In May 2007, the claimant became aware that employment was available with the respondent. He telephoned the respondent and enquired about work. A few hours later, he was contacted by the respondent and invited to come for interview. He attended two interviews which he passed. Some days later, he received a telephone call with an offer of employment. Per the contract of employment, the start date was 18 May 2007 and the first period of employment was for eleven weeks. The claimant received a renewed temporary contract of employment before the end of the first one, and this was the pattern for all contracts which the claimant received.

In total, the claimant received six temporary contracts of employment. (*Copies of all of the claimant's contracts of employment were opened to the Tribunal*). From same, the following details are summarised...

<i>Contracts dates</i>	<i>Commencement date</i>	<i>End date</i>
<i>First contract dated 18 May 2007</i>	<i>from 18 May 2007</i>	<i>until 3 August 2007</i>
<i>Second contract dated 28 July 2007</i>	<i>from 4 August 2007</i>	<i>until 2 November 2007</i>
<i>Third contract dated 26 October 2007</i>	<i>from 2 November 2007</i>	<i>until 1 February 2008</i>
<i>Fourth contract dated 31 January 2008</i>	<i>from 2 February 2008</i>	<i>until 2 May 2008</i>
<i>Fifth contract dated 2 May 2008</i>	<i>from 3 May 2008</i>	<i>until 1 August 2008</i>
<i>Sixth contract dated 1 August 2008</i>	<i>from 2 August 2008</i>	<i>until 31 October 2008</i>

The first contract described the claimant's position as a "Temporary Manufacturing Associate" and the remainder of the contracts describes his position as a "Temporary Production Associate". The claimant explained that he had worked in a number of zones for the respondent. The work had involved building computers to installing software.

A few days before his employment ended, the claimant spoke to a supervisor and asked about getting a permanent contract for himself and another Polish work colleague (*hereinafter referred to as J*). They were the only ones who did not have permanent contracts. Other employees who worked with them had permanent contracts. The supervisor told the claimant that he was safe, that he was a good worker, that he knew his job and that management would be informed that that claimant's and J's services were required. That same day before the end of the shift, the supervisor informed the claimant that his contract of employment was ended.

Letter dated 29 October 2009 ended the claimant's contract of employment. (*A copy of this letter was opened to the Tribunal*). The contracts of employment provided that "The contract may be terminated by (*the respondent*) or by you at any time on giving one week's written notice." The termination letter stated in part "This is a letter to let you know that your contract with (*the respondent*) will expire on 31st October 2008." The claimant confirmed that he did not receive a week's notice of the termination of his employment but just 50 minutes notice at the end of his shift. All of the other staff had left when the supervisor gave the claimant the letter terminating his employment. The supervisor had apologised to the claimant for not having a contract for him and had said that, in his position as a temporary supervisor, he did not have the power to do anything about it. After the claimant had left the respondent in October 2008, he heard that fifty permanent contracts had been given to employees. J was one of those employees who received a permanent contract.

The claimant stated that he had been able to work in different zones for the respondent. After February, he had expected to receive a permanent contract. It had been a big surprise to him when he did not receive it.

The claimant established his loss for the Tribunal. He had been unsuccessful in securing alternative employment since the termination of his employment by the respondent, despite his efforts to do so. He is currently unemployed.

Replying to Tribunal questions, the claimant confirmed that, months ago, J had told him that he was still working for the respondent. J had received a permanent contract. A week after leaving, the claimant had heard that fifty permanent contracts had been given out by the respondent.

The claimant also confirmed that since the termination of this employment and dismissal, the respondent had not contacted him with an offer of further employment.

Closing submission:

The claimant's legal representative stated that the claimant had been employed under a succession of six temporary contracts of employment and there had been no break in service between any of the contracts. Before each contract of employment had expired, a new one had been produced to the claimant.

No provision appeared in any of the temporary contracts of employment that the claimant was excluded from the protection of the Unfair Dismissals Acts, 1977 to 2007, as provided in section 2 subsection 2 (b) of the Unfair Dismissals Act, 1977. The claimant's representative cited the case of Fitzgerald –v– St. Patrick's College {UD244/1978} as an authority on this point.

No procedures had been applied to the termination of the claimant's contract of employment. He had just received a letter on 29 October 2008 which had terminated his employment. The claimant's legal representative formally withdrew the claim under the Organisation of Working

Time Act, 1997 on behalf of the claimant. He stated that the claimant had received all of his holiday pay from the respondent.

Determination:

The Tribunal was satisfied that the respondent, as named and addressed on the T1-A form (*Notice of Appeal*) was validly notified of the hearing of this case. The Tribunal also noted that the claimant's legal representative made every effort in his professional capacity, using the respondent's internal Data Protection & Privacy Section and the offices of a state agency – the DataProtection Agency - to ensure that service of these proceedings was effected on the respondent. However, there was no appearance by the respondent or representation on their behalf.

The claimant commenced employment with the respondent on the 18 May 2007 on a fixed term temporary contract, its duration until 3 August 2007. A further five fixed term temporary contracts were issued to the claimant, which gave him unbroken service with the respondent from 18 May 2007 until 31 October 2008. The claimant informed the Tribunal that by letter dated 29 October 2008, he was given notice of the termination of his employment, same to take effect on 31 October 2008 and no reason was given to him for this termination. The Tribunal deems that as no explanation was provided to the claimant, fair procedures were not availed of in the termination of his employment and in the circumstances, the Tribunal is satisfied that the termination of employment was summary and unfair.

The claimant's evidence was that a work colleague, who had also been employed under a similar series of fixed term contracts, was offered a permanent contract at or around the time of the termination of the claimant's employment. As the claimant's work colleague was similarly situated in employment terms to the claimant, the Tribunal is satisfied that the claimant was unfairly treated and this defect additionally renders the dismissal unfair. Accordingly and based on the uncontested evidence, the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the Tribunal awards the claimant compensation in the sum of €17,000.00. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also succeeds and the Tribunal awards the claimant €454.67 which is the equivalent of one week's pay in lieu of notice.

The Tribunal noted that the claim under the Organisation of Working Time Act, 1997 was formally withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)