

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – Appellant

CASE NO.
UD14/2009

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER – Respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. M. O'Connell BL

Members: Mr. F. Cunneen
Ms. C. Byrne

heard this appeal in Dublin on 17 April 2009

Representation:

Appellant(s) :

Ms. Claire Bruton BL instructed by
Moran & Ryan, Solicitors,
Arran House, 35 Arran Quay, Dublin 7

Respondent(s) :

Mr. Gerald Kelly, Gerald Kelly & Company, Solicitors,
11 Herbert Street, Dublin 2

The determination of the Tribunal was as follows:-

This case came to the Tribunal as an appeal against Rights Commissioner Recommendation r-064027-ud-08/TB.

A Rights Commissioner found that there had been an unfair dismissal of the employee in question and in Rights Commissioner Recommendation r-064027-ud-08/TB recommended that the respondent pay compensation in the amount of €7,500.00 to the said employee. The employee appealed this recommendation to the Tribunal stating that she felt that this would not adequately compensate her. The respondent's written response to this appeal contended that the appellant had not been unfairly dismissed and, in the alternative, that the Rights Commissioner's award had been totally adequate in this case.

At the Tribunal hearing, the appellant's representative stated that the issues had been narrowed to

quantum only whereupon the Tribunal stated that it could look at the appellant's attempts to mitigate her loss and the likelihood of her gaining employment in the future. The respondent's representative stated that he concurred with this and that he did not want to go into evidence about the termination of the appellant's employment.

The Tribunal then said that it would not now deal with contributory factors but that it had received and read the papers (including Rights Commissioner Recommendation r-064027-ud-08/TB) in preparation for this case before learning at the hearing that the hearing would be as to quantum only.

Giving sworn testimony, the appellant confirmed that her employment had ended in April 2008. She stated that she had a B.A. in English from a Dublin university as well as various T.E.F.L. qualifications and a M.A. in applied linguistics. She had thirty years' experience.

After her employment with the respondent, the appellant looked for work going alphabetically through the names of English language schools and also had recourse to F.A.S.. She sent e-mails and went on websites. She had contacted nearly fifty places by the date of the Tribunal hearing.

In May 2008 the appellant had an interview and got a job at the end of June 2008. She had a temporary summer job teaching English. For twenty hours per week she was paid twenty euro per hour (the same hourly rate as paid by the respondent with whom her gross pay had been six hundred euro per week for a thirty-hour week).

Subsequently the appellant had "a little work till December 2008" i.e. five hours per week for all of November and for two weeks of December. She was then told that there was no more work, received a P45 and looked for work again.

The appellant got an interview and started another T.E.F.L. job in mid-February 2009 where she was earning one hundred euro (for five hours) per week and where there was "a possibility of summer work" but where "they can't promise after that".

The appellant voluntarily stated her age (which was in accordance with her earlier reference to having thirty years' experience) and said that she was still "looking for all kinds of work" including library work.

Under cross-examination, the appellant said that she had printouts with her from her job applications. She named several language schools that she had visited by arrangement after applying.

The appellant stated that the reason why her first job after the respondent had ended was "because the work was not there by the end of the year". She had got teaching hours until the start of November 2008 because someone had been ill. Then she had five hours per week for one student.

The appellant disclosed that she had been offered some summer work for July and August (of 2009) and that she would get twenty hours per week at twenty euro per month for those months. However, she added: "It's possible I'll get no work after August."

In re-examination, the appellant said that she had not been earning enough to pay tax and that,

while she had got some replies to letters, some potential employers had not replied. She was pessimistic about retaining even five teaching hours per week in the long term. She had been a permanent employee when she had worked for the respondent.

Determination:

The Tribunal heard evidence only on quantum and did not hear evidence about the termination of the appellant's employment. Having heard evidence of her loss, her attempts to mitigate same and her employment prospects in the future, the Tribunal varies only that part of Rights Commissioner Recommendation r-064027-ud-08/TB which deals with the appropriate compensation.

Varying Rights Commissioner Recommendation r-064027-ud-08/TB, the Tribunal deems it just and equitable to award the appellant compensation in the amount of €15,000.00 (fifteen thousandeuro) under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)