

## EMPLOYMENT APPEALS TRIBUNAL

### CLAIMS OF:

Employee  
Claimant

CASE NO.  
UD11/2009  
MN14/2009  
WT6/2009

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. Quinn BL  
Members: Mr. D. Hegarty  
Ms. H. Kelleher

heard this claim at Horse & Jockey on 28th July 2009

### Representation:

Claimant: Mr. Brendan F. Hyland,  
Solicitor,  
B. Hyland & Co,  
Luttrell House,  
Castle Street,  
Roscrea,  
Co. Tipperary

Respondent: There was no appearance by or on behalf of the Respondent in respect of the substance of the case.

### **Background:**

At the commencement of the sitting of the division, a part time employee of the Respondent, a Ms. G.F. appeared before the Tribunal and made an application for an adjournment of the hearing.

It appeared to the Tribunal from the information relayed to it that although the circumstances precipitating the adjournment application had crystallized a number of weeks prior to the date of the hearing, no application for an adjournment had been made at any stage prior to the date of the hearing, despite ample opportunity for having done so in the period subsequent to the 30<sup>th</sup> June 2009, when notification of the hearing was furnished to the parties.

The Claimant and her Solicitor had received no notice of the application for the adjournment and

objected to the Respondent's application.

Furthermore, Ms. G.F. was not in a position to adduce any documentation in support of the application for an adjournment and no witnesses on the part of the Respondent were present. It appears that Ms. G.F. herself had just learned of the matter from her Employer two working days prior to the hearing before the Tribunal.

In such circumstances, the Tribunal unanimously declined the application and proceeded to determine the claim.

**Determination:**

Despite the Tribunal affording Ms. G.F. an opportunity to represent the Respondent at the hearing and to cross-examine the Claimant on her evidence, she testified of having no knowledge whatsoever of the events or circumstances surrounding the claim and although she remained as an observer of the proceedings before the Tribunal, she did not participate in them and it was in these circumstances, that there was no appearance, by or on behalf of the Respondent at the hearing of the claim and the evidence of the Claimant to the Tribunal was uncontroverted.

The evidence of the Claimant established that her employment in a general administrative capacity commenced with a predecessor of the Respondent in January 1995 and that by a letter dated the 23<sup>rd</sup> September 2008, she received notice of dismissal from her employment by the Respondent. It appears that in the intervening years there had been transfer of undertakings and in so far as the Claimant was concerned, there was no break in her service. As at the date of termination of her employment, the evidence of the Claimant was that she was in receipt of a gross weekly wage of €440.43.

In the light of the foregoing and in the absence of any admissible evidence adduced by the Respondent to show either that the dismissal of the Claimant, resulted wholly or mainly from one or more of the matters specified in section 6(4) of the Unfair Dismissals Act 1977, or that there were other substantial grounds justifying the Claimant's dismissal, the Tribunal, in applying the provisions of section 6(6) of the Unfair Dismissals Act 1977, determines that the dismissal of the Claimant was unfair.

The redress sought by the Claimant was "*compensation*" and in the absence of any evidence from the Respondent, the Tribunal having considered all the available remedies, determines that compensation is the appropriate remedy in all of the circumstances of this case.

The Claimant sought compensation of up to a maximum of 104 weeks pay in respect of financial loss incurred to date and which is ongoing, being an amount of up to €45,804.72.

As and from the date of the Claimant's dismissal, the Claimant had not made very extensive efforts to secure alternative employment.

As at the date of the hearing, the Claimant has remained out of work outside of the home, she being the mother of two children. The evidence of the Claimant disclosed that she had only made some efforts in January 2009 to secure alternative employment in the interim and then to no avail. On the Claimant's own account, this was explained as attributable to the fact that she wasn't in a fit state to work, for a number of months from the date of her dismissal, because of the way she had been treated by the Respondent from in or about the middle of August 2008 onwards and culminating in

her dismissal.

The Tribunal also observes *obiter* that whilst some criticisms might reasonably be made of the Claimant concerning her unwillingness to relocate herself to Birr from Roscrea, on the documentation of the Respondent introduced into evidence by the Claimant, coupled with her testimony, the manner by which the Respondent proceeded to effect a dismissal of the Claimant from her employment was wholly contrary to concepts of natural justice and fair procedures.

In so far as further criticism might be voiced of the Claimant's failure to exhaust an appeal process subsequent to receipt by her of notification from the Respondent of its decision to dismiss her from employment, the Tribunal observes that such might reasonably be regarded as unduly harsh, having regard to the nature and extent of the apparent flaws in the process culminating in its decision at first instance.

The Tribunal also notes *obiter* the apparent preparedness on the part of the Claimant at or about the relevant time to have accepted a redundancy by the Respondent, had such a situation been presented by it to her and appropriate redundancy payment offered. Apparently, this was a situation which was in fact presented by the Respondent to a colleague of the Claimant's and declined, thereby setting in train the series of events which ultimately culminated in the dismissal of the Claimant.

### **Redress**

The Tribunal determines that an award to the Claimant in the amount of €15,268.28, represents just and equitable compensation, pursuant to the provisions of the Unfair Dismissals Acts, 1977 to 2007 . In determining the amount of compensation payable, the Tribunal had regard to the measures, or more appropriately the failure on the part of the Claimant to adopt, or avail of all reasonable measures to mitigate her financial losses attributable to her dismissal.

The claim under the Minimum Notice and Terms Of Employment Acts, 1973 to 2005, succeeds and the Tribunal awards the Claimant the sum of €1,761.72, this being four weeks gross pay in lieu of notice, the Tribunal having been advised that the Claimant's employment ended on the 3<sup>rd</sup> October 2008, notice of dismissal having been received on the 23<sup>rd</sup> September 2008.

The Claimant withdrew the claim under the Organisation of Working Time Act, 1997, during the hearing.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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