

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:  
EMPLOYEE

CASE NO.  
UD618/2009, MN627/2009

against

EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mrs. M. Quinlan  
Members: Mr P. Pierce  
Ms M. Finnerty

heard this claim at Dublin on 4th January 2010

**Representation:**

Claimant : Mr Con Guiney B L instructed by  
Paul O'Sullivan & Co, Solicitors, Upr Flr 63 Deerpark Road, Mount Merrion, Co Dublin

Respondent : No representation listed

The determination of the Tribunal was as follows:

**Respondent's Case**

The chief operations officer who was responsible for human resources within the company outlined the respondent's case. He explained that the claimant who was a Chinese citizen was employed with the firm since the spring of 2006. The claimant was the holder of a stamp 2 visa that allowed him to undertake employment for up to forty hours per week. That type of visa was subjected to regular renewals one of which was due on 30 September 2008. With that in mind the chief operations officer held an informal meeting with the claimant on 15 August 2008. The claimant indicated he was intending to apply for a graduate visa. Following that meeting the witness contacted the Department of Enterprise, Trade and Employment and an employer body and presented general enquiries to those bodies on work permit and visa issues. The respondent gained the impression from them that it would be in breach of relevant legislation should it continue to employ the claimant beyond the oncoming expiry of the claimant's visa. The witness however accepted that he did not specifically bring the claimant's situation to the attention of those organisations.

According to the chief operations officer he again met the claimant on 25 September. He also stated that minutes were taken of that meeting by a colleague, a copy of which he produced to the

Tribunal. He again urged the claimant to resolve his visa situation and repeated that the company would have to terminate his employment unless he produced a fresh one by the end of the month. The claimant acknowledged the seriousness of the situation and referred to his planned application for a graduate visa. The chief operations officer said he had no knowledge on a three-month grace period for stamp 2 visas and indeed added that such periods were not issued. Besides the claimant never raised the notion of such a period with the respondent. The ultimate failure of the claimant to produce another visa left the respondent with no option but to dismiss the claimant. The witness who described the claimant as a satisfactory employee accepted there was one week's outstanding notice due to him.

### **Claimant's Case**

The claimant arrived in Ireland in 2002 and resided there initially on a student visa. He then acquired other visas issued on a yearly basis. Subsequent to the expiry of those visas he had a grace period of three months in which to obtain another visa. The witness was aware that his current visa was to expire on 30 September 2008 and wanted to apply for a graduate visa. However to do so he needed the full and final results from his college for that application. He had expected those results by the end of September 2008 but they had not materialised by then. The claimant insisted he had only one meeting with the respondent on this issue that took place in the middle of September 2008. There was no minute taker at that meeting which was attended by the chief operations officer, and another manager.

At that meeting the claimant explained his visa situation including the concept of a grace period. The witness also received conflicting information from the respondent and the immigration authorities on the meaning and significance of holding a graduate visa. When collecting his payslip on 28 September the claimant found his P45 enclosed. He felt so unfairly treated by that action that he was not prepared to return to the respondent when finally he received yet another visa that he called a graduate one issued on 5 November. That visa was due to expire on 28 February 2009 and the witness maintained it was backdated to the expiry of his earlier visa.

### **Determination**

The Tribunal was presented with some conflicting evidence together with imprecise information on a variety of visas. Having carefully considered this case the Tribunal is not satisfied that the respondent adequately demonstrated that it would have acted unlawfully in continuing with the claimant's employment. Accordingly, the claimant's dismissal is not deemed to be fair. It is also the view of the Tribunal that there was an element of contribution by the claimant into his own dismissal. Taking these issues into consideration the Tribunal awards the claimant €4000.00 as compensation under the Unfair Dismissals Acts, 1977 to 2007.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 is also allowed and the appellant is awarded €400.00 as compensation for one week's outstanding notice.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)

