

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE - claimant

MN1147/09

RP1308/09

UD1137/09

Against

EMPLOYER - 1st named respondent

EMPLOYER - 2nd named respondent

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr. L. Tobin
Mr J. Flannery

heard this claim at Naas on 28th April 2010.

Representation:

Claimant: Mr. Andrew Cody, Reidy Stafford, Solicitors, 1-3 Moorefield
Terrace, Newbridge, Co Kildare

Respondent: 1st named respondent
Ms Sinead Mullins, IR/HR Executive, IBEC, Confederation House,
84/86 Lower Baggot Street, Dublin 2
2nd named respondent
Mr. Paul Dunne, IR/HR Executive, IBEC, Confederation House,
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Determination:

The claimant brought a claim under the Redundancy Payments Acts 1967 to 2007, the Unfair Dismissals Act 1977 to 2007 and the Minimum Notice and Terms of Employment Acts 1973 to 2005. The claimant stated that she intended to bring a claim for redundancy against the first named

respondent and a claim for unfair dismissal against the second named respondent following a transfer of undertakings.

The second named respondent prior to dealing with the redundancy/unfair dismissal issue argued that the Tribunal did not have jurisdiction to hear the claim against them due to the fact that the claimant brought her claim too early. It was argued that the letter of dismissal was dated the 25 May 2009 and that the Tribunal were obliged to add the minimum notice period to that date bringing the date of dismissal date up to the 8 June 2009. The claim was lodged on the 4 June 2009. The Tribunal having considered the argument find that there is no legal obligation on the Tribunal to add the minimum notice period to the date of dismissal. The legislation covering this area was not designed to penalise a claimant for bringing a claim within the notice period. The date of dismissal the Tribunal can rely on is the date on the actual dismissal letter.

Having heard opening submissions from the claimant, the first named respondent and the second named respondent, the Tribunal was satisfied that a transfer of undertakings had occurred. The second named respondent conceded the claim and stated that they were willing to re-instate the claimant in line with the relief she was seeking.

The claimant stated that along with the re-instatement she was seeking financial remuneration for her loss to date. The claimant gave evidence that she was out on sick leave prior to December 2008 due to a stress related illness. The claimant stated that she wanted to go back to work in December 2008 but needed to get a certificate from her own general practitioner stating she was fit to return and on receipt of that certificate she would have to be assessed by the second named respondent's doctor. She stated that her doctor said she would give her that certificate but she never actually requested it from her. The Tribunal also note that the claimant was on illness benefit until January 2010. The claimant stated that the reason she had made no efforts to find work was because she was not fit to due to her illness. In those circumstances the claimant's claim for compensation must fail.

The claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the Tribunal orders that the claimant be reinstated. As the Tribunal finds that the claimant should be re-instated the claims under the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 are therefore dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)