

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE
- *claimant*

CASE NO.
UD1065/09

against

EMPLOYER
- *Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms O. Madden B.L.

Members: Mr. J. Reid
Ms M. Finnerty

heard this claim at Dublin on 9th April 2010

Representation:

Claimant: Ms Eugenie Houston BL instructed by Mr. James P. Evans, James P. Evans,
Solicitors, 13c Main Street, Ongar Village, Dublin 15

Respondent: Ms Rosemary Mallon BL instructed by Arthur Cox, Solicitors, Earlsfort Centre,
Earlsfort Terrace, Dublin 2

The determination of the Tribunal was as follows:-

Preliminary point

The respondent raised a preliminary point as to whether the claimant had sufficient service to make a claim under the Unfair Dismissals Acts 1977 to 2007.

Counsel for the respondent explained that the claimant commenced with the respondent on the 26th November 2007 on a fixed term contract. As the project the claimant was employed to work on was coming to an end, the claimant was issued with one month's notice on the 21st October 2008. The claimant's employment was terminated on 21st November 2008. Counsel outlined that the claimant did not have the requisite service under the Unfair Dismissals Act 1977 to 2007, as her employment terminated on the 21st November 2008, hence she had less than the required one year's service. However if the claimant's employment had terminated on the 25th November 2008 she would have had the required service. Counsel referred the Tribunal to a number of Employment Appeals Tribunal decisions UD212/97, UD 783/98, UD864/98.

Counsel for the claimant contended that the Tribunal did not have to rely on case law.

The claimant worked for fifty-two continuous weeks and that statute sets out that a year means fifty-two weeks. Counsel referred to the Minimum Notice and Terms of Employment Act 1973 to 2005 where a “year” means any period of fifty-two weeks. Counsel also referred to the Interpretation Act 2005. Counsel outlined the consideration of the contract and made reference to a letter in which the respondent informed the claimant that the agreed date of commencement of her employment was 30th October 2007. The respondent delayed this start date while they were acquiring a work permit for the claimant. When the claimant presented herself for work on the 26th November 2007 she was told to go away for the day, as her work permit was still not in order. The employer further provided the claimant with €1,000.00 prior to starting her employment, this was consideration of the contract. The Tribunal had discretion to look at when the employment relationship formed between both parties. The contract of employment was not provided to the claimant until April 2008.

Counsel for the respondent pointed out that €1000.00 referred to by the claimant representative was in fact a cheque made payable to the Department of Enterprise Trade and Employment to secure a work permit for the claimant. The respondent also had evidence that the claimant was working in her previous position up to 22nd November 2007, which indicated that she did not expect to commence her employment with the respondent on the earlier date of 30th October 2007 as alleged.

Counsel for the claimant said that the €1,000 for the work permit was consideration of the contract. Counsel for the respondent mentioned that the reason for the delay was irrelevant.

Determination

The Tribunal have carefully considered the preliminary applications and submissions by both parties in relation to this case, as to whether the claimant had the requisite time for an unfair dismissal claim. Firstly the Tribunal do not accept that any employment relationship existed between the two parties prior to the 26th November 2007. Secondly the Tribunal do not find that the claimant had the required service for the purposes of interpreting the meaning of service as required by the Unfair Dismissal Acts 1977 to 2007. A week means any period of seven consecutive days, a year means any period of fifty two weeks as defined in the Minimum Notice and Terms of Employment Act 1973.

Accordingly the Tribunal finds it does not have jurisdiction to hear the claim under the Unfair Dismissal Act 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)