

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE - appellant

UD1531/2009

against the recommendation of the Rights Commissioner **R-072313-UD-08/EH**
in the case of:

EMPLOYER – respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Revington S.C.

Members: Mr. J. O'Neill
Mr T. Brady

heard this appeal at Dublin on 31 August 2010
and 17 January 2011

Representation:

Appellant:

Mr. Eoin Ronayne, Civil & Public Service Union,
19/20 Adelaide Road, Dublin 2

Respondent:

Mr. Anthony Kerr BL instructed by XXXXXXXXX

This appeal arose as a result of an employee (the appellant) appealing against a recommendation of a Rights Commissioner **R-072313-UD-08/EH** in the case of an employer (the respondent)

The determination of the Tribunal was as follows:

The appellant was recruited as a Clerical Officer after an open competition followed by a competency based interview. He was allocated to the respondent and his employment began on 18 June 2007. His employment was subject to a one-year probationary period. Probation reviews dated 31 August and 29 November 2007 suggested that the appellant should be suitable for confirmation but observed that the appellant had not been fully trained or tested in the full range of duties and needed supervision on items outside the normal basic parameters and needed a high level of monitoring.

After the second of the reviews serious concerns began to be expressed about the appellant's ability to work in the respondent's telephone centre. As a result of the concerns raised the employee assistance programme was involved. Until March 2008 it was thought that his performance could be turned around. In April 2008 local management prepared a final probationary report for

discussion with the appellant in which the termination of his employment was recommended. Whilst there was a dispute between the parties as to when this recommendation was communicated to him the appellant refused to sign the recommendation, as he did not agree with it. The appellant appealed the recommendation to terminate his employment and the appeal was conducted on 9 May 2008. Following detailed consideration the decision to terminate the appellant's employment was confirmed and he was given one week's notice on 17 June 2008.

In his recommendation the Rights Commissioner found that the appellant had been unfairly dismissed as the "Guidelines for Probation" had not been properly applied and recommended an award of compensation. The appellant then appealed that recommendation seeking to be either reinstated or reengaged. At the outset of the appeal hearing the respondent's representative indicated that, whilst they accepted that the appellant was unfairly dismissed, they considered that compensation was the appropriate remedy. In those circumstances the appeal hearing was limited to the question of remedy.

The appellant's position was that he should be reinstated and transferred to another Department/Office of the State, he accepted that he was not suited to the work in the respondent and stated that he would be better suited to work in the Department of Communications. The respondent's position was that as an officer who had not completed probation there was no procedure for his transfer. It was further submitted on behalf of the respondent that each Department/Office of the State constituted a separate employer for the purposes of the Unfair Dismissals Acts and accordingly there was no jurisdiction to reinstate from one Department/Office to another.

Determination

By accepting that he was not suited to the work of the respondent it is clear to the Tribunal that the appellant must also accept that the respondent was not in error when it concluded that he had not satisfactorily completed probation. It follows that the dismissal was unfair on procedural rather than substantive grounds. The Tribunal accepts the respondent's contention that no mechanism exists for the transfer of an officer who has not completed probation. Accordingly, the Tribunal is satisfied that compensation is the appropriate remedy in this case and awards €25,000-00 under the Unfair Dismissals Acts, 1977 to 2007. The Tribunal wishes to place on record its appreciation of the way the evidence was presented with an absence of malice despite what was clearly a difficult matter for the parties.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)