

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

CASE NO.
UD1119/2009
MN1131/2009
WT504/2009

against

EMPLOYER

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. E. Murray

Members: Mr. D. Hegarty
Mr. J. Flavin

heard these claims in Cork on 25th May 2010 and 16th July 2010

Representation:

Claimant: Mr. Paudie O'Mahony, Babington, Clarke & Mooney, Solicitors,
48 South Mall, Cork

Respondent: Mr. John Barry, Management Support Services (Ireland) Limited,
The Courtyard, Hill Street, Dublin 1

Preliminary Issue

The claims in this instance were not brought within six months of the alleged dismissal. Having heard submissions made on behalf of the parties in this regard, the Tribunal took the view that there was a lack of clarity with regard to the date of termination. In all the circumstances the Tribunal took the view that the application had been properly brought within the time provided for by

Statute, and the Claimant was entitled to proceed.

Respondent's Case

The Respondent claimed that at all times the Claimant's husband who brought a similar application under the Unfair Dismissals Act which was heard in conjunction with the present case, was speaking for her and that she was represented by her husband in all matters.

A number of meetings were held to resolve the matter between the Claimant and her husband and the Respondent and eventually the Claimant broke off contact with the Respondent.

Claimant's Case

The Claimant attended a number of meetings with her husband and her husband felt that he was not getting the response or respect that he deserved from the Company and ultimately he refused to attend any further meetings as he was not getting any positive news about employment.

Communications stopped from the Respondent and there was no contact for a number of months.

Determination

The Tribunal unanimously finds that the Respondent in this case failed in their duty as employer to the Claimant to communicate directly, clearly and unambiguously with her in relation to the situation in which she found herself. The Respondent had an obligation to ensure that the lines of communication were kept open directly with the Claimant and the Tribunal feels that it is not an adequate defence for them to say that insofar as they were concerned that at all times the Claimant's husband "was speaking for her". The Respondent consequently treated the Claimant unfairly. The problem was added to by the Claimant's apparent reliance on decisions made by her husband, and her unavailability for alternative placement nonetheless the Tribunal feels that the Claimant is entitled to succeed in her application under the Unfair Dismissals Acts, 1977 to 2007. The appropriate remedy is damages and the Tribunal awards €5000.00 damages in the circumstances under the said legislation.

The claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, and under the Organisation of Working Time Act, 1997, are dismissed because the Tribunal does not find the respondent in breach of the said legislation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)