

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE – **Claimant**

UD1986/2009

MN1870/2009

WT841/2009

against

EMPLOYER  
– **Respondent**

EMPLOYER - President of the respondent, EMPLOYER – Secretary of the respondent and EMPLOYER – Treasurer of the respondent as officers to be sued on behalf of the respondent 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. C. Corcoran B.L.

Members: Mr. M. Noone  
Mr. N. Dowling

heard these claims at Dublin on 16 November 2010  
and 5 April 2011

#### **Representation:**

Claimants:

Mr. Paddy Coughlan, Citizens Information Service,  
18 Village Centre, Finglas Village, Dublin 11 on the first day.  
Ms. Leigh Hamilton B.L. instructed by Ms. Sarah Woods,  
Doyle Associates Solicitors, 56 Main Street, Rathfarnham,  
Dublin 14 on the second day

Respondent:

President of the respondent on the first day.  
Treasurer of the respondent on the second day

The determination of the Tribunal was as follows:

#### **Determination:**

The former President of the respondent (FP) told the Tribunal on the first day that if he had known the claimant was going to be represented then he would have arranged representation for the respondent. Moreover the respondent was facilitated with an adjournment to allow for

representation to be arranged. Despite FP being the person who effected the dismissal of the claimant he was not present at the Tribunal on the second day.

The claimant was employed as a part-time bar person from February 2002. The employment was uneventful until January 2009 when the respondent sought confirmation, for insurance purposes, from the claimant, who was of an age to be entitled to free public transport when the employment began, that she was fit for the job she was engaged in. This requirement was confirmed to the claimant in a letter from the Secretary of the respondent on 20 January 2009. On both 2 and 10 February 2009 FP wrote to the claimant to remind her to furnish the respondent with the required certificate, the second of these letters warned the claimant that her continued employment was under threat if the certificate was not forthcoming.

The claimant attended her GP who provided a certificate confirming that the claimant was indeed fit for the job. The claimant hand delivered the certificate to the respondent's insurers on 13 February 2009. On 16 February 2009 the claimant contacted the respondent's insurers and received confirmation that receipt of the certificate had been confirmed in an email from the insurers to FP. On 19 February 2009 FP wrote to the claimant terminating her employment for failure to provide the certificate from 5 March 2009 with two weeks' notice.

In circumstances where the claimant was dismissed for failing to provide a certificate of fitness to perform her job when in fact she had produced such certificate and in the absence of any other reason for the dismissal it must follow that the dismissal was unfair. Having considered all the circumstances of this case the Tribunal deems that compensation is the appropriate remedy and awards €16,000-00 under the Unfair Dismissals Acts, 1977 to 2007.

The claimant being entitled to four weeks notice of termination and only having received two weeks notice the Tribunal awards €648-00, being two weeks' pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The respondent being unable to produce records of holiday pay the Tribunal further awards €648-00, being the equivalent of two weeks' pay, under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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