

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

-claimant

CASE NO.
UD2037/2009

Against

EMPLOYER

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms K. T. O'Mahony B.L.

Members: Mr. W. O'Carroll
Mr. F. Dorgan

heard this claim at Ennis on 20th July 2010
and 22nd February 2011

Representation:

Claimant: Mr. Brian Higgins, Mandate Trade Union, Killoran House, Catherine Place,
Limerick

Respondent: No appearance or representation

Claimant's Case

The claimant commenced employment in September 2007 with the previous owner of the business, which was transferred to the respondent on 25 May 2009. On the transfer over of the business the respondent put the claimant on a probationary period reduced hours and over time gradually reduced his hours of work from 35 to 6 per week. The respondent issued the claimant with a letter on 18 August 2009 stating that his contract was not being renewed on the expiry of this probationary period effective from 25 August 2009.

A Rights Commissioner made a decision in favour of the claimant in relation to the EC (Safeguarding of Employees Rights on Transfer of Undertakings) (Amendment) Regulations, 2003.

Determination

The Tribunal is satisfied that the respondent was properly on notice of the hearing.

When the respondent took over the business from the previous owner the claimant's contract of employment and rights under it were transferred to the respondent under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations,

2003. Based on the uncontroverted evidence of the claimant the Tribunal finds that the claimant was dismissed. As the respondent did not appear to discharge the onus of proof that rests on the respondent under s.6(6) of the Unfair Dismissal Acts the Tribunal, in applying s.6 (1) of the Acts, deems the dismissal to be unfair. Accordingly, the claim under the Acts, 1977 to 2007 succeeds. The respondent went into liquidation on 30 April 2010. Calculating the claimant's loss to that date the Tribunal awards the claimant €11,638.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)