

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM(S) OF:**  
EMPLOYEE- *claimant*

**CASE NO.**  
UD1686/2010  
MN1641/2010

against

EMPLOYER-*respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. P. McGrath BL

Members: Mr. W. Power  
Mr. T. Brady

heard this claim at Dublin 12<sup>th</sup> December 2011

Representation:

Claimant: In person

Respondent: Michael McNamee BL instructed by Ryan & Associates, Solicitors, 53 North Strand Road, Dublin 3

The determination of the Tribunal was as follows:

Preliminary application

**Respondent**

The respondent's representative contended that the claim was not properly brought as the respondent as named is registered differently on the Company Registration. Secondly the claimant's position was funded by *Dublin Port Authority* in partnership with the respondent. Thirdly the claimant commenced employment on the 27<sup>th</sup> January 2009, received his dismissal notice on the 15<sup>th</sup> January 2010 and his last day at work was the 21<sup>st</sup> January 2010 therefore had insufficient service to bring a claim under the Unfair Dismissals Acts 1977 to 2007. The respondent paid the claimant his contractual notice.

**Claimant**

The claimant referred to his contract of employment and the name of the respondent therein. He had instructed a solicitor while lodging his claim. He accepted that while the *Dublin Port Authority* made a financial contribution to his employment, however he took instruction from the respondent. His letter of termination was issued by the respondent. He was relying on his

contract of employment where it states that he would be given “not less than 4 weeks notice”. He received notice on the 15<sup>th</sup> January 2010 and he replied by letter on the 19<sup>th</sup> January 2010 and was asked to leave the premises on receipt of this. His last day at work was the 19<sup>th</sup> January 2010.

## **Determination**

The Tribunal has carefully considered the evidence it has heard together with the oral and written submissions they have been provided by the parties herein.

The claimant instituted proceedings against X by way of a T1A on the 6<sup>th</sup> of July 2010. The claimant seeks redress under the Unfair Dismissals legislation and the Minimum Notice Acts 1973 to 2005 citing “inadequate notice” in his T1A.

In the T2 received in February 2011 the respondent has stated that the claimant’s correct employer is in fact the Dublin Docklands Development Authority and that the employment was on a fixed term contract of one year’s duration.

The matter came before this division of the Tribunal on the 12<sup>th</sup> of December 2011 at which time a number of preliminary issues were raised.

The Tribunal has been asked by the claimant to allow an amendment pursuant to section 39 of the Organisation of Working Time Act 1997. The correct name of the entity in question is X. The claimant left out the words “Y” in his T1A. The respondent has submitted that this amounts to “carelessness” and not inadvertence and therefore should not be capable of amendment.

The Tribunal disagrees with the respondent’s position and in accordance with Section 39 of the Organisation of Working Time Act 1997 amends the name of the employer so as to state correctly the name of the employer concerned. A failure to do so would amount to an injustice being visited upon the claimant. The respondent cannot rely on an inadvertence. In making this decision the Tribunal must have regard to the fact that the T1A is not a document akin to court proceedings.

The Tribunal has not been persuaded that a co-respondent should be named in these proceedings (namely the Dublin Docklands Development Authority). Whilst funding may have been channelled through the DDDA there is no evidence to suggest that the claimant was recruited and employed by anyone other than X.

The suggestion that a one year fixed-term contract was intended and/or negotiated is not borne out by any of the evidence provided. Save insofar as the claimant answered an advertisement that stated “The initial contract is for one year”. The contract of employment provided on the 20<sup>th</sup> of January is silent on the point and general tenor of the contract is not in keeping with a fixed term contract of one year’s duration.

Having accepted the correct naming of the employer (as amended) and having rejected the suggestion of this being a fixed term contract, the Tribunal must now turn its attention to whether the claimant had sufficient service with his employer such that would allow him bring a claim under the Unfair Dismissals legislation.

The claimant must therefore be able to show that he has 52 weeks service with the respondent company.

It is common case that the claimant commenced employment on the 26<sup>th</sup> January 2009. It is also agreed that the claimant was notified of the fact of his redundancy on the 14<sup>th</sup> January 2009. In the letter of termination the employer seeks to rely on a statutory notice period being applicable i.e. giving the claimant one week's notice of the fact of termination which the respondent states gives a termination date of the 21<sup>st</sup> January 2010 i.e. just short of the 52 weeks required by the Acts.

The claimant states that his contract of employment allowed for the contract to be terminated "by either party giving to the other not less than 4 weeks' notice" which in these circumstances would mean that the claimant's service was in excess of the 52 weeks required.

The Unfair Dismissals Act 1977 provides in Section 1 that the date of termination is taken to be the later of the dates applicable under either the Minimum Notice and Terms of Employment Acts, 1973 to 2005 or the notice provisions set out in the contract of employment. Quite clearly, in the matter before the Tribunal herein the contract of employment allows for a four week notice period which therefore is the applicable period to be taken into account for the purposes of calculating the date of termination of employment. The notice period brings the employment period up to the 11<sup>th</sup> February 2009. The claimant satisfies the 52 week period required under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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