## **EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:

CASE NO.

EMPLOYEE

claimant

MN154/2011 UD142/2011 WT32/2011

Against

EMPLOYER

respondent

under

## MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal (Division of Tribunal)

Chairman: Ms J. McGovern B.L.

Members: Mr. B. Kealy Mr. S. O'Donnell

heard this claim at Dublin on 9th May 2012

Representation:

- Claimant(s): Mr. Cathal Murphy BL instructed by Ms. Niamh O Herlihy Gallagher Shatter, Solicitors, 4 Upper Ely Place, Dublin 2
- Respondent(s): Mr. Tony Kerr BL instructed by Mr. Michael Heneghan, Chief State Solicitor's Office, Osmond House, Little Ship Street, Dublin 8

The determination of the Tribunal was as follows:-

## **Claimant's Case**

The claimant told the Tribunal that he received a letter from the Personnel Officer of the respondent on the 17<sup>th</sup> August 2010 in which it was outlined to him that due to 4 absences amounting to 16 days in total during his probationary period, his contract was being terminated with effect from the 23<sup>rd</sup> August 2010. During his probationary period periodic assessments were undertaken by the respondent all of which referred to his start date as the 24<sup>th</sup> August 2009. In a document entitled 'Probation Report' his start date was also detailed as being the 24<sup>th</sup> August 2009. The claimant stated in evidence that he recalled his start date as being the 24<sup>th</sup> August 2009.

In cross examination he stated that he could not recall when he received his letter of appointment from the respondent. He could not recall being contacted by the respondent as it

was five years ago. He could not recall if his commencement date was actually the 24<sup>th</sup> August 2009 or the 26<sup>th</sup> August 2009. When asked if he could recall what he was doing on the 24<sup>th</sup> August 2009 he said that he could not. He could not remember receiving any telephone calls from the respondent. He indicated that he spent a considerable amount of time signing documents on the first day of his employment. The claimant was shown a contract indicating his start date would be the 26<sup>th</sup> August 2009 which he confirmed he signed on the 25<sup>th</sup> August 2009.

# **Respondent's Case**

The Personnel Officer told the Tribunal that she had no personal dealings with the claimant. A group of recruits commenced training with the respondent on the 24<sup>th</sup> August 2009. Forty were due to start but only thirty eight attended on the 24<sup>th</sup> August 2009. She was unsure of the start time but it was 9.00 or 10.00a.m. She was absolutely certain that the claimant was not one of the initial forty starting recruits that commenced on the 24<sup>th</sup> August 2009. The claimant and another recruit commenced on Wednesday the 26<sup>th</sup> August 2009 to replace the two candidates that did not turn up on the 24<sup>th</sup> August. The claimant was notified that he had been accepted to the respondent's training programme by letter dated 24<sup>th</sup> August 2009 which was probably sent by post. The witness gave evidence that the claimant's payment started on the 26<sup>th</sup> August 2009.

In correspondence dated the  $20^{\text{th}}$  August 2010 to the claimant he was informed that his contract was being terminated on the  $23^{\text{rd}}$  August 2010. She was in no doubt that the claimant started on the  $26^{\text{th}}$  August 2009.

In cross examination when asked why the claimant's letter of dismissal referred to the 23<sup>rd</sup> August 2010 as being the end of his probationary period the witness stated that it was a mistake. She stated that the 23rd August 2010 was the date of dismissal if someone commenced on the 24<sup>th</sup> August 2009.

# **Determination on Preliminary Issue**

Having considered all the evidence and the submissions from both parties the Tribunal, on balance, prefers the evidence of the respondent together with the contractual documentation between the claimant and the respondent providing that the claimant's start date was the 26<sup>th</sup>August 2009. Consequently the claimant does not have the requisite service in which topursue a claim under the Unfair Dismissals Acts, 1977 to 2007 and the Tribunal does nothave jurisdiction to hear the claim.

No evidence was adduced in relation to the Organisation of Working Time Act, 1997 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and these claims fail.

Sealed with the Seal of the

Employment Appeals Tribunal

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