

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
MN167/2008
UD174/2008

Against

EMPLOYER *respondent a*

and

EMPLOYER *respondent b*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. O'Leary B L

Members: Mr T. O'Sullivan
Ms A. Moore

heard this claim at Monaghan on 9th May 2012

Representation:

Claimant: Mr Paul Boyce, Paul Boyce & Co, Solicitors, No 4 Dublin
Street, Monaghan, Co Monaghan

Respondents: Barry Healy & Company, Solicitors, "Laurel Lodge",
Hillside, Monaghan
Mr Michael Bowden, FAS, Manager Legal Services, Foi & OI,
PO Box 456, Baggot Street, Dublin 4

Background

The Tribunal heard that the claimant was a supervisor on a community employment scheme with *respondent a*. She alleged that she was unfairly dismissed by a P45 dated October 2007, that fair procedures were not followed, that any allegations against her were unproven.

Respondent a is no longer trading and was managed by a committee. The company has been dissolved.

Respondent b contended that it was not the employer but provided funding to the scheme.

Claimant's Evidence

Giving sworn testimony, JM stated that she began work for *respondent b* in 1997 on a temporary basis to cover maternity leave. The contract was on a rolling 9 monthly basis and in 1999 a full time position became available with *respondent a*. Her name was put forward for the post and she was successful. She was appointed to the role of supervisor for a scheme with *respondent a*. She had some knowledge of difficulties with funds at the scheme and knew it was not being properly managed. She continued to work for the respondent and while she pointed out various problems with invoicing she was told just to follow orders as nobody was gaining financially. A meeting was held in August of 2007. The meeting was conducted by three representatives from *respondent b*. Financial irregularities were mentioned at the meeting and she was suspended pending an investigation. *Respondent b* carried out the investigation and she received her P45 in October 2007. The claimant was asked to attend the garda station in 2009 and was arrested in 2010 where she was questioned for a full day. She was told she was free to leave and has never been charged with anything. She stated that she is no wiser five years later and her name and her reputation has been blackened. *Respondent a* has been dissolved and the scheme has been amalgamated with another one that is still running today.

Closing

The *respondent b* representative contends that the claimant was not their employee. Funding and guidance was provided by them to the scheme. All statutory deductions from salary was deducted by *respondent a*. Evidence of precedent was given to the Tribunal.

Determination

The Tribunal noted that the claimant gave evidence that she took instruction in relation to invoicing from *respondent a*. On this basis and other evidence heard during the hearing the Tribunal must determine that the aforesaid respondent was the employer. In the circumstances *respondent b* was not the employer. On the evidence adduced the Tribunal determines that the claimant was dismissed and that the dismissal was unfair by reason of the manner in which the dismissal took place. By reason of the fact that *respondent a* is dissolved it is impossible for the Tribunal to make a determination against the employer under the Unfair Dismissals Acts 1997 to 2007 and the Minimum Notice and Terms of Employment Acts 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

