

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD346/2011
MN333/2011

Against

EMPLOYER

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 M. Gilvarry

Members: Mr D. Morrison
Ms R. Kerrigan

heard this claim at Donegal on 19th June 2012

Representation:

Claimant: Ms Siobhan McCormack, Citizens Information Centre, Public
Services Centre, Drumlonagher, Donegal Town, Co. Donegal

Respondent: Gallagher McCartney, Solicitors, New Row, Donegal Town, Co. Donegal

The determination of the Tribunal was as follows:-

The application came before the Tribunal on a preliminary point as to whether the claimant had the requisite 12 months service as set out in the Unfair Dismissals Acts. The date of appointment was claimed by the respondent to be 24th November 2009 and date of dismissal 19th November 2010. On examining the P60 the Tribunal noted that the start date clearly showed 2nd November 2009. The Tribunal determines that this constituted a relevant start date and therefore the claimant's claim was valid.

The claimant's claim for Unfair Dismissal was conceded by the respondent and the only issue for determination was remedy, and both sides submitted that compensation was the appropriate remedy but disagreed as to how it was to be assessed. The Tribunal considered compensation to be the appropriate remedy.

The Tribunal heard that the claimant was discussed at a management meeting and it was decided not to retain her services. A letter of dismissal was written by the respondent on 15th November 2010 giving the date of 12th November 2010 as the dismissal date. The claimant was paid to the end of the month to cover her notice period.

The claimant eventually got a temporary position in Dublin and now attends college. She would never have left a full time position had it been available to her.

The Tribunal is satisfied that the claimant received her entitlement under the Minimum Notice and Terms of Employment Acts 1973 to 2005, therefore the claim fails.

The respondent's representative submitted that the Tribunal could only award compensation based on the claimant's loss of earnings, or if there was no such loss, up to a maximum of four weeks remuneration. The claimant submitted that all financial loss suffered by the claimant as a result of the dismissal should be taken into account, and pointed to loss arising from her relocation to Dublin, and loss due to her finding work at a lower hourly rate, and the loss of her accrued employment rights with the respondent.

The Tribunal is empowered to award compensation for financial loss up to a ceiling of 104 weeks remuneration, but financial loss is not confined to remuneration. Section 7(3) of the Unfair Dismissals Act 1977 (as amended) defines financial loss as inter alia including "any actual loss" suffered by the claimant.

Taking all factors into account including the evidence of loss and the mitigation thereof the Tribunal awards the claimant the sum of €4,950.00 in compensation which it considers just and equitable in all the circumstances.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)