

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *claimant*

UD2176/2011  
WT891/2011

Against

EMPLOYER - *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr D. Peakin  
Mr M. O'Reilly

heard this claim at Dublin on the 15 March 2013

Representation:

Claimant(s) :

Respondent(s) :

The determination of the Tribunal was as follows:-

#### **Summary of Evidence – Preliminary Issue**

At the commencement of the hearing the respondent's representative stated that the claimant did not have the required one year service to bring a claim under the Unfair Dismissals Acts and as a result the Tribunal did not have jurisdiction to hear the claim. The respondent was described as a business name partnership. A witness for the respondent gave evidence of the claimant commencing employment at the store on the 6 September 2010 having worked at another store which is owned by another entity where his brother and business partner is also a company director. A second witness for the respondent an operations manager explained that he is employed by a company which provides shared book-keeping, accounting and human resource services to both the respondent and the entity where the claimant was first employed. He and the claimant knew one another and the claimant texted him requesting any supervisor role that became available in the future. As there were no supervisor roles at the location he was employed he discussed with the business name partners the possibility of offering a supervisor role at the store run by the partnership and a position was offered and accepted by the claimant. The respondent's evidence was that the claimant resigned on the 29

August 2011.

The claimant's evidence was that he commenced employment on the 21 August 2009 as a sales assistant. He was offered a manager role in April 2010 by the operations manager aforesaid at another store owned by the entity but did not take up that position as he felt he was not ready for a management role. Sometime later he sent a text to the operations manager seeking a supervisor role. He knew the operations manager and was aware that he was the area manager for the group of stores. At the request of the operations manager they met at the respondent's store and he was offered a trainee manager role which he accepted. Two days later he finished at the store where he was a sales assistant and commenced in the trainee management role. His employer did not change and he always understood that he was employed by the same group. The claimant's evidence was that he resigned on the 31 August 2011 due to the manner in which he was treated by the employer.

The claimant's letter of resignation was submitted to the Tribunal which is undated.

### **Preliminary Determination**

The Tribunal has carefully considered the evidence adduced both verbal and written and the submissions made so as to inform it in addressing the preliminary issue raised by the respondent questioning whether the Tribunal has jurisdiction to hear the claim.

The respondent is part of a group of companies who are identified in the formal letter of appointment of the position offered to the claimant. This appointment arose following an offer of advancement in his employment to the claimant by a servant or agent of this group while he the claimant was in the employment of another company within the group which shares a common director with the respondent.

It is found and determined that this servant or agent at all times acted both under the control and direction of the group. The Tribunal finds and determines that the claimant's employment with the respondent arose as a result of him being nominated by this servant or agent to continue his employment within the group by offering him a position with the respondent.

The Tribunal therefore has jurisdiction to hear the claim and the Tribunal so determines.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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