

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE,

CASE NO.  
UD298/2012

against the recommendation of the Rights Commissioner in the case of:  
EMPLOYER  
under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. G. Hanlon

Members: Mr. R. Prole  
Mr. S. O'Donnell

heard this appeal in Dublin on 6 June 2013

Representation:

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Appellant(s):

Respondent(s):

No attendance or representation

The determination of the Tribunal was as follows:-

This case came to the Tribunal as an employee appeal under the Unfair Dismissals Acts, 1977 to 2007, against Rights Commissioner Recommendation r-111577-ud-11/DI.

When the Tribunal began its hearing with the jurisdiction point as to whether or not the appellant had the full year's service required to claim unfair dismissal it was contended on behalf of the appellant that the rights commissioner had erred in deciding this point in the negative. Documentation was presented to the Tribunal. The appellant's position was that he had come off state support on 24 May 2010 to take up work as an apartment complex caretaker on 26 May 2010. It was opined that confusion might have been created by the fact that there had been a transfer of undertaking such that the appellant had service of more than a year in the same job albeit that he had had more than one employer. The Tribunal was referred to the 29 May 2010 AGM minutes for the complex in which it was stated that the appellant was the new caretaker. The appellant's employment subsequently ended at the end of May 2011. He had experienced difficulty with another employee who had been taken on to do caretaking duties. It was alleged that this situation had culminated in an employment termination that the claimant believed to have been an unfair dismissal. He had earned a gross weekly wage of €500.00 per week.

In sworn testimony the appellant claimed that he had worked at the complex for one year and five days. After his employment ended he made efforts to obtain new work but was unsuccessful to the point that he ultimately set up a maintenance company which was not yet making a profit.

No evidence was offered at the Tribunal hearing by or on behalf of the respondent to show any substantial grounds to justify the termination of the appellant's employment and rebut the legal presumption that a termination is deemed to be an unfair dismissal unless the employer makes a case to show otherwise.

**Determination:**

From the documentation presented and the appellant's uncontested sworn testimony the Tribunal was satisfied that the appellant had more than one year's service in his job as a caretaker.

The respondent did not attend the hearing to attempt to justify termination of the claimant's employment. On the uncontested evidence of the appellant, unanimously allowing the appeal under the Unfair Dismissals Acts, 1977 to 2007, against Rights Commissioner Recommendation r-111577-ud-11/DI, the Tribunal deems it just and equitable in all the circumstances of the case to award the appellant compensation in the amount of €26,000.00 (this sum being equivalent to fifty-two weeks' gross pay at €500.00 per week) under the said legislation.

Sealed with the Seal of the  
Employment Appeals Tribunal

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

