

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE

CASE NO.  
UD396/2012

against

EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. J. McGovern BL

Members: Mr. F. Moloney  
Mr. T. Brady

heard this claim in Dublin on 7 June 2013

Representation:  
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Claimant(s):

Mr. Oisín Clarke BL instructed by  
Mr. Paul W. Tracey, Paul W. Tracey, Solicitors,  
34 Westmoreland Street, Dublin 2, Ireland

Respondent(s):

Mr. Cian Duffy, Denis I Finn, Solicitors,  
5 Lower Hatch Street, Dublin 2

The determination of the Tribunal was as follows:-

An unfair dismissal claim was brought in respect of a driver/warehouseman who had been employed by the respondent from February 2007 to August 2011 when he was allegedly unfairly dismissed without any procedures.

The respondent's position was that the claimant's contract of employment had been terminated on the grounds that the respondent was unable to keep the claimant's position for the ten-month period for which the claimant was committed to prison.

The Tribunal was furnished with a copy of a letter dated 5 August 2011 from BOF (the claimant's manager) to the claimant stating that the claimant's partner (KF) had informed BOF that the claimant had been sentenced to complete a prison sentence in Poland. The letter stated that KF had provided BOF with a translated copy of the court judgment which clearly outlined that the claimant had to complete a ten-month prison sentence in Poland.

The letter went on to state that, with regret, BOF had no alternative but to terminate the claimant's employment with the respondent with immediate effect. BOF stated that, given the nature of the claimant's role, he could not keep the claimant's position vacant for ten months. The letter concluded by stating that the claimant's P45 was attached, that his outstanding holidays had been paid and that he had been paid two weeks' salary in lieu of notice.

### **Determination:**

The Tribunal listened to the testimony of witnesses from both sides including an account of how, after a lawyer was engaged in Poland, the claimant was released and returned to Ireland after having been incarcerated for only a portion of his original sentence. However, the fact remained that the claimant had been unavailable for work.

The Tribunal did not find how the respondent was in breach of its own procedures to the point that the claimant might have been unfairly dismissed and the Tribunal noted that the claimant was paid notice.

The allegation made that BOF had told KF that he would keep the claimant's post open was not accepted by the Tribunal. The respondent had no way of knowing that the claimant would not have to serve ten months such that his employment contract would be frustrated.

The Tribunal noted that, while the procedure adopted was not entirely satisfactory, the respondent was restricted by virtue of the fact that the claimant was in prison and the claimant's partner, the only point of contact with the claimant, did not speak English.

The uncontroverted fact is that, at the date of dismissal, there was no prior information as to a possible date of return for the claimant. It was the respondent's evidence that his job could not be kept open for an unspecified length of time. There was a conflict of evidence about the issue of unpaid leave but the fact of the matter was that there was a prospect of the claimant being in jail for up to ten months. The respondent had very few employees.

In all of these very particular and unusual circumstances the Tribunal is unanimous that it

cannot find this dismissal unfair. The claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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