

When do you not need 12 months service to claim Unfair Dismissal*

This issue arose in case *UDD 2116* being a case of *Winnah Rose Hairdressing Limited and Meaghan Ryan*.

The background of this case related to the fact that the employee had been employed for less than 12 months.

The Court pointed out that Section 2(1)(a) of the Unfair Dismissal Act sets out that otherwise than as provided for in the Act it does not apply to an employee who has less than 1 year's continuous service.

The Complainant contended that the reason for her dismissal was that she had on the 11th April, having been dismissed on the 20th of April, had sought to assert her rights to be paid the National Minimum Wage.

The Court pointed out that the National Minimum Wage Act, 2000 at Section 36 provides that an employer shall not cause or suffer any action prejudicial to an employee for an employee having exercised or having purposed to exercise a right under the Act. The Court point out that Section 36(2) covers a dismissal of an employee for contravention of subsection 2 is deemed to be an Unfair Dismissal within the meaning of Section 6(1) of the Unfair Dismissal Acts 1977 to 1973 but without prejudice to Sections 2 to 5 of the Act of 1977 except that it is not necessary for the employee to have at least 1 year's continuous service.

The Court was of the view that the operative reason for the dismissal of the Complainant was that the Complainant had become entitled to receive the National Minimum Wage and on that basis the Court held that it was left with no alternative but to determine that the dismissal by operation of the Act of 2000, being the National minimum Wage Act, was unfair within the meaning of that Act.

This is a very helpful decision from the Labour Court in clarifying the law on this matter

***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

***In contentious cases a solicitor may not charge fees or expenses as a proportion or percentage of any award or settlement.**