

## **EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:  
Employee

CASE NO.  
UD525/2007  
WT164/2007

Against

2 Employers

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**  
**ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms E. Daly B.L.

Members: Mr D. Morrison  
Mr G. Hunter

heard this claim at Letterkenny on 30th April 2008

### **Representation:**

Claimant : Ms. Fidelma Carron, Assistant Branch Organiser, SIPTU,  
Port Road, Letterkenny, Co. Donegal

Respondent : Mr Loughlin Deegan, IBEC, 11-12 Millcourt, The Diamond, Donegal Town,  
Co. Donegal

The determination of the Tribunal was as follows:

### **Preliminary Issue**

The respondent objected to this case proceeding to a substantive hearing on the grounds that the Tribunal did not have jurisdiction to hear it. The company argued that since the claimant signed a discharge form on the termination of his employment he had compromised his right to take proceedings against the respondent. However, the company accepted that the claimant was not allowed to change that form when he signed it on 29 December 2006.

In evidence the claimant said he became aware on 18 December 2006 that he was facing redundancy from the respondent. He was presented with a discharge form from the company on 28 December and took it away for consideration. He wanted to change some aspects of that form but was told the next day that this was not possible without first consulting with the operations' manager. That manager was not present that day and it was indicated that he would probably return to the premises the following week.

Due to his contemporary financial situation the claimant felt he had no other option but to sign that

form. It was his clear impression that in order to receive the payment quoted on that form that he needed to sign it. It was a case of if you want the cheque on offer then sign the form. The claimant did not agree with the all of the separate amounts quoted and did not want one cheque to cover all his payment entitlements. It transpired that due to the late reluctant acceptance of this cheque the claimant was unable to deposit it that day but did so at the first available opportunity subsequent to that date.

### **Preliminary Determination**

The claimant contends that Section 13 of the Unfair Dismissals Acts, 1977 to 2001 can only apply where consent to waive rights under the Act is fully informed and freely given. The legal authorities furnished by both sides support this contention and the Tribunal agrees with that contention.

The evidence was that claimant did not have to sign the discharge form but could have waited to discuss what he was unhappy about, with the company, had he waited to meet with a member of management.

This claim that he was under financial pressure which “forced his hand” is not accepted by the Tribunal. He may have been under financial pressure due to this occurring over the Christmas period however this should not have forced him to sign away rights which he was aware and unhappy about signing. Furthermore the discharge form specifically refers to the issue of independent legal advice which put the claimant on notice of the necessity for his consent to be fully informed.

The claimant signed a discharge form and accepted he had time to bring it away and consider it beforehand. The discharge form included the following *“I further confirm that I have read this document and that I have had the opportunity to take advice from my representative, with respect to the meaning and effect of my completing this document and that accordingly I both understand and accept the contents of this document in full before signing it”*.

This did not present an ambushing of the claimant as is contended. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2001 fails. No evidence was adduced in relation to the claim under the Organisation of Working time Act, 1977 and therefore it fails for want of jurisdiction.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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