

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD1234/2006, RP625/2006

against

Employer

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2001
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey

Members: Mr. C. Ormond
Mr. N. Broughall

heard this claim at Dublin on 10th April 2007

Representation:

Claimant : Mr Alex White B L instructed by
Spelman Callaghan, Solicitors, Corner House, Main Street, Clondalkin, Dublin 22

Respondent : Ms Siobhra Rush B L instructed by
Matheson Ormsby Prentice, Solicitors, 30 Herbert Street, Dublin 2

The determination of the Tribunal was as follows:

At the outset of this hearing the appeal under the Redundancy Payments Acts, 1967 to 2003 was withdrawn. According to the claimant's application to the Tribunal his date of termination with the respondent was 1 November 2005. His application was initially received by the Tribunal offices on 31 October 2006 followed by a fully completed form on 1 November 2006. Since this was clearly outside the stipulated time allowed for submission of claims under the Unfair Dismissals Acts a preliminary issue over whether exceptional circumstances allowed the applicant to submit his claim outside the proper time had to be addressed.

Claimant's Case

The claimant was made redundant by the respondent company in autumn 2003. He continued to work for that company up to 1 November 2005 following that redundancy. The claimant took up residence in Moscow in 2005. Due to serious ill health the claimant was hospitalised in that city from 15 to 23 June and again from 28 June to 11 July. He was also an in-patient from 18 July to 10

August 2005. The claimant submitted copies of medical reports in relation to those times in hospital. In addition the witness was also treated in the cardiology department of a Moscow hospital as an in-patient from 10 October to 15 November 2005. Following his discharge the claimant was prescribed with medication.

In a letter dated 15 February 2007 the doctor treating the claimant wrote that the witness had great anxiety about his health following that discharge. The patient had adverse side effects from his treatment and complained about depression and lack of concentration among other issues. That doctor stated that the claimant was not capable of returning to normal work activity until May 2006. The witness was never certified as suffering from depression and did not take any specific medicine for that ailment.

The claimant confirmed his condition started to improve from May 2006 onwards. However prior to that time he was still suffering ill health. During that period he continued to feel in fear of his life. He remained at home in Moscow during the winter of 2005/06 and travelled to Australia via several stages in early spring of 2006 for a family visit.

The claimant said he met his immediate manager twice in late September/early October 2005 in Ireland. He informed him that his employment with the respondent was to cease on 31 October 2005. From that time up to May 2006 the claimant was primarily focusing in his health and felt incapable of pursuing his work related issues. By the summer of 2006 he had sought information on his employment situation with state agencies and proceeded to engage a solicitor in this regard. By July 2006 he was ready to apply to the Tribunal but needed to get his paper work in order.

Respondent's Case

A sales person who described himself as the claimant's point of reference at the respondent confirmed he told the claimant on 30 September 2005 that his services with the company were no longer required. The witness added that the claimant was left on the respondent's email and work system to facilitate his ongoing work. His name and access would not be renewed following the respondent's normal six-month review of their contractual operators. That review was scheduled for 31 October/1 November 2005. The witness referred to a work related email between the claimant and a financial manager subsequent to 30 September 2005. However the witness did not believe that the claimant had work to finish from that date up to 1 November.

Determination

The Tribunal finds that there were exceptional circumstances that allowed the claimant to submit his claim outside the time proscribed under the Act. While only one of the medical reports relates to the relevant time period, the Tribunal takes the view that it would be unfair to ignore that the claimant was in ill health for some time prior to leaving his employment. The cumulative effect of his ill health would constitute exceptional circumstances.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

