

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

UD643/2006

CASE NO.

for implementation of the recommendation of the Rights Commissioner

in the case of:

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal

(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. F. Moloney
Mr. S. O'Donnell

heard this claim at Dublin on 14 May 2007

Representation:

Claimant :

Mr. Gerry Flanagan, Assistant Secretary, State & Related
Agencies Branch, SIPTU, Liberty Hall, Dublin 1

Respondent :

Mr. Emmet Whelan, Denis McSweeney, Solicitors,
6 Mount Street Crescent, Dublin 2

This case came to the Tribunal by way of appeal for implementation of Rights Commissioner Recommendation r-021856-ud-04/TB.

The determination of the Tribunal was as follows:-

Appellant's Case

The appellant's representative sought that Rights Commissioner Recommendation r-021856-ud-04/TB be implemented.

Respondent's Case

The respondent's representative told the Tribunal that the respondent had given him instructions for an appeal and that he thought that the Rights Commissioner Recommendation had been appealed.

Citing as a precedent the case of Edwards v MP Construction Limited (UD842/2004), the respondent's representative submitted that the Tribunal could hear a substantive appeal of a Rights Commissioner Recommendation even when due to hear an appeal for implementation of that very Rights Commissioner Recommendation.

Determination:

Section 7 (4) of the Unfair Dismissals Act, 1977 to 1993, states:

“Where a recommendation of a rights commissioner in relation to a claim for redress under this Act has not been carried out by the employer concerned in accordance with its terms, the time for bringing an appeal against the recommendation has expired and no such appeal has been brought, the employee concerned may bring the claim before the Tribunal and the Tribunal shall, notwithstanding subsection (5) of this section, without hearing the employer concerned or any evidence (other than in relation to the matters aforesaid), make a determination to the like effect as the recommendation.”

Under the Unfair Dismissals Acts, 1977 to 2001, the Tribunal finds that it is bound by the above provision and makes a determination that the appellant is in time and that the appellant is to be reinstated from the date of her dismissal. This order should be read in conjunction with Rights Commissioner Recommendation r-021856-ud-04/TB.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)