

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
Employer

CASE NO.  
UD500/2005

against the recommendation of the Rights Commissioner in the case of:  
Employee

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary BL

Members: Mr. R. Keating  
Mr. P. Woods

heard this appeal in Dublin on 14 May 2007

Representation:  
\_\_\_\_\_

Appellant(s) :  
Mr. Emmet Whelan, Denis McSweeney, Solicitors,  
6 Mount Street Crescent, Dublin 2

Respondent(s) :  
Mr. Gerry Flanagan, SIPTU, Liberty Hall, Dublin 1

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

The determination of the Tribunal was as follows:-

#### **Appellant's Case**

The appellant'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 appellant'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.

## **Respondent's Case**

Asked as to his attitude to the above submission, the respondent's representative confined himself to stating that the respondent wanted Rights Commissioner Recommendation r-021856-ud-04/TB implemented.

### **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, that it has no discretion in the matter and, therefore, that the appeal against Rights Commissioner Recommendation r-021856-ud-04/TB fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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