

## **EMPLOYMENT APPEALS TRIBUNAL**

APPEAL OF:  
Employee

CASE NO.  
UD1255/2005

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

Employee and

Employer

under

### **UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. McGrath

Members: Mr E. Handley  
Mr. N. Broughall

heard this appeal at Naas on 1st November 2007

### **Representation:**

Appellant : Mr Ciaran Smith B L instructed by  
Eoin O'Connor & Co., Solicitors, 16 South Main Street, Naas, Co. Kildare

Respondent : Mr. Don Culliton, Local Government Management Services Board  
Cumberland House, Fenian Street, Dublin 2

The determination of the Tribunal was as follows:

In a two to one majority decision against the appellant the Tribunal finds that the appellant failed to show that exceptional circumstances existed that prevented her from lodging the claim within the appropriate six months period.

### **Majority Finding:**

With about two to three weeks to run of the six month time period allowed, the applicant gave unequivocal instructions to her solicitor on the 8<sup>th</sup> of March 2005 to proceed with a claim against the employer pursuant to her rights under the Unfair Dismissal legislation.

Despite this and in full knowledge of the time and limitations involved, the applicant's solicitor failed and neglected to lodge the appropriate form to the Rights Commissioner.

The question is whether this failure constituted exceptional circumstances which prevented the

applicant from lodging her application within the six months allowed?

The solicitor herself gave evidence. She did not and cannot explain the oversight on her part. To her credit, she accepts full blame for the oversight. There was no suggestion of the fault lying elsewhere. She took her instructions and failed to act on them.

**Minority Finding:**

The Tribunal has carefully considered and reflected on the implications of this situation. Where an applicant gives bona fide instructions and a solicitor fails utterly to act on same can the tribunal find such circumstances to be exceptional such that she qualifies to have the limitation period extended? In the opinion of this Tribunal member it does. It is unusual in the extreme that a solicitor would fail to act in the face of instruction to do.

In reaching this decision, this Tribunal member is mindful of the unfairness which is caused to the applicant as a result of her solicitor's acknowledged mistake and in particular the quenching of the cause of action which the applicant has against the respondent employer.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

