

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD787/2006

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. McAveety

Members: Mr. B. O'Carroll
Ms. E. O'Shea

heard this claim at Sligo on 26 October 2007

Representation:

Claimant:

Mr. Saul Wolfson B.L. instructed by Mr. Gerard Cullen,
John Gerard Cullen Solicitors, Main Street,
Carrick on Shannon, Co. Leitrim

Respondent:

Ms. Rosemary Mallon B.L. instructed by,
Mr. Eamonn M. Gallagher, Rochford Gallagher & Co. Solicitors,
Tubbercurry, Co. Sligo

The determination of the Tribunal was as follows:

A preliminary issue was raised at the outset of this hearing whereby it was submitted on behalf of the respondent that, as the claimant had lodged claims relating to his dismissal under both the Unfair Dismissals Acts, 1977 to 2001 and the Employment Equality Acts, 1998 to 2004, written submissions having been sent to the Equality Tribunal, then, by virtue of subsection 2 (b) of section 101 of the Employment Equality Acts, 1998 to 2004 which provides that..... "*where an individual has referred a case to the Director under section 77(1) and either a settlement has been reached by mediation or the Director has begun an investigation under section 79, the individual –if he or she was dismissed before so referring the case, shall not be entitled to seek redress (or to exercise, or continue to exercise, any other power) under the Unfair Dismissals Acts 1977 to 1993 in respect of the dismissal, unless the Director, having completed the investigation and in an appropriate case, directs otherwise and so notifies the complainant and the respondent*", this Tribunal had no jurisdiction to hear the claim unless or until the Director directed otherwise.

The Tribunal received submissions, both oral and written, from the parties in this case

Determination:

Having considered the extensive submissions from both parties in this case, it is clear that the point in contention in this preliminary application on behalf of the respondent is, effectively, what is meant by the term “investigation” in subsection 2 (b) of section 101 of the Employment Equality Acts, 1998 to 2004 and further when such an investigation might be considered to have begun. The claimant’s submission is that an investigation is analogous to a hearing and cannot be considered to have begun until the parties have been called to appear before the Director. The respondent’s submission is that an investigation can be considered to be more all-encompassing than a hearing and that the provision of submissions to the Director indicated that such an investigation had begun.

The Tribunal is satisfied that an investigation and a hearing are not analogous, rather that a hearing forms part of an investigation. The Tribunal is further satisfied that the provision of submissions to the Director can be accepted as showing that an investigation has begun. That being the case the Tribunal must find that, in accordance with subsection 2 (b) of section 101 of the Employment Equality Acts, 1998 to 2004, the claimant cannot seek redress under the Unfair Dismissals Acts, 1977 to 2001 unless or until the Director, having completed the investigation and in an appropriate case, directs otherwise and so notifies the complainant and the respondent.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)