

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee,

RP127/2007
UD289/2007

against

Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony B.L.

Members: Ms M. Sweeney
Mr J. McDonnell

heard this claim at Cork on 28th January 2008

Representation:

Claimant :

Patrick J. O'Shea & Co., Solicitors, 77 Main Street,
Midleton, Co. Cork

Respondent :

Mr Michael Deasy B.L., instructed by Mr. Ken Murray, Ken Murray & Company,
Solicitors, 3 Oliver Plunkett Place, Midleton, Co. Cork

The determination of the Tribunal was as follows:-

The appeal under the Redundancy Payments Acts 1967 to 2003 was withdrawn.

Preliminary issue:

Counsel for the respondent contended that the Tribunal did not have the jurisdiction to hear the case under the Unfair Dismissals Acts 1977 to 2001 on the grounds that the claim was lodged with the Tribunal more than six months after the date of dismissal.

The fact of dismissal was in dispute between the parties.

It was the respondent's case that the claimant resigned from his employment on 10 June 2006 and lodged Form T1A, initiating his unfair dismissal claim, with the Tribunal on 12 March 2007, some three months outside the six-month time limit stipulated under Section 8(2) of the Unfair Dismissals Acts 1977 to 2001 for lodging a claim. It was the claimant's case that he did not resign on 10 June 2006 and that there was uncertainty as to the date of dismissal.

It was the claimant's case that whilst he was working in the respondent's bar on 10 June 2006 he was subjected to verbal abuse by at least one member of the group with which the respondent was playing cards and that the respondent found the verbal abuse humorous and did not make any effort to stop it. The claimant was due to finish work that afternoon between 4.00pm and 5.00pm. The abuse occurred between 2.30pm and 3.00pm. The claimant left before his finish time in order to prevent the situation becoming more serious. As he was leaving work he said to the respondent, "I will see you on Monday." The respondent did not hear the claimant utter these words and he did not know that the claimant was leaving his place of work before his finish time. It was the respondent's case that when the claimant walked out of work on 10 June 2006 he had resigned from his position.

It was the claimant's case that whilst he was working in the respondent's bar on 10 June 2006 he was subjected to verbal abuse by at least one member of the group with which the respondent was playing cards, that the respondent found the verbal abuse humorous and did not make any effort to stop it. The claimant was due to finish work that afternoon between 4.00pm and 5.00pm. The abuse occurred between 2.30pm and 3.00pm. The claimant left before his finish time in order to prevent the situation becoming more serious. As he was leaving work he said to the respondent, "I will see you on Monday." The respondent did not hear the claimant utter these words and he did not know that the claimant was leaving his place of work before his finish time. It was the respondent's case that when the claimant walked out of work 10 June 2006 he had resigned from his position. The respondent denied that he dismissed the claimant.

The claimant was next scheduled to work the following Monday, 12 June 2006. As he was getting ready for work on Monday, he received a text message from the respondent, which read, "Don't come to work – I've thinking to do." The claimant sent a text to the respondent on Thursday 15 June asking what had happened with his job. The respondent replied by text stating, "You walked out. Not good enough". The claimant understood from this text that he was being left go and sought legal advice. He began to look for alternative work immediately. The claimant agreed in cross-examination that he had not been told that he was "dismissed".

A letter dated 16 June 2006 from the claimant's legal representative to the respondent was opened to the Tribunal. The letter referred to the incident of 10 June 2006, sought payment in respect of holidays due to the claimant and stated that the claimant was endeavouring to find alternative employment. In his reply the respondent stated that the employment relationship had broken down. A further letter dated 25 July 2006 from the claimant's legal representative accepted that the claimant was dismissed by text message of 12 June 2006.

Some months later the claimant called into the respondent's bar and asked what was happening. The respondent told him he would have his P.45 for him in a couple of days plus any money owing to him. The claimant needed his P.45 for a job he had coming up. However, the claimant did not receive his P.45 or the monies owing to him.

Determination:

The Tribunal is satisfied that the claimant did not resign from his employment on 10 June 2006 when he left his place of employment before his finish time. The claimant was due to return to work on Monday, 12 June 2006. In light of the respondent's instruction to the claimant on Monday, 12 June 2006, not to return to work and his reply, three days later, to the claimant's enquiry as to the status of his employment, the Tribunal finds that it was reasonable for the claimant to believe on 15 June 2006 that he had been dismissed. Notwithstanding the contents of the claimant's legal representative's letter of 25 July 2006 it is clear from the claimant's enquiry made on 15 June 2006 that he was unsure of the status of his employment until he received the respondent's reply to that enquiry.

Section 8(2)(a) and (b) of the Unfair Dismissals Act 1977 as substituted by section 7(a) of the Unfair Dismissals (Amendment) Act, 1993 sets out the time limits for lodging claims under the Acts. The claimant was dismissed on 15 June 2006. Form T1A was lodged with the Tribunal on 12 March 2007, which is outside the six months period from the date of dismissal as stipulated for such lodgement in the above section 8(2)(a) of the Act. No application was made to the Tribunal under the above section 8(2)(b) to extend the period for lodging the claim. Accordingly, the Tribunal has no jurisdiction to hear this case.

Whilst no claim was lodged with the Tribunal under the Minimum Notice and Terms of Employment Acts the Tribunal notes the respondent's undertaking to the Tribunal to make a payment in lieu of notice to the claimant.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)