

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
MN877/2007
UD1128/2007

WT381/2007

against
Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Hayes

Members: Mr R. Murphy
Mr. J. Dorney

heard this claim at Navan on 8th May 2008

Representation:

Claimant(s) :

Mr. Tom Pearse BL instructed by Brendan Walsh, Traynor & Company, Solicitors, 86
Clanbrassil Street, Dundalk, Co Louth

Respondent(s) :

Ms. Rosemary Mallon BL instructed by Etain Lynch, Patrick Tallan & Co., Solicitors,
Ashbourne, Co. Meath

Determination

The Claimant commenced his employment on 6th October 2005. His employment ended on 20th December 2006. It is the Claimant's case that he was dismissed. The Respondent's case is that he resigned. He makes claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2001; the Unfair Dismissals Acts, 1977 to 2001; and the Organisation of Working Time Act, 1997. His notice of claim was received by the Tribunal on 11th December 2007, which is outside the six month limit prescribed by s.8(2)(a) of the Unfair Dismissals Acts and by s.27(4) of the Organisation of Working Time Act. Accordingly, an application was made at the outset of the

hearing for the Tribunal to extend the time pursuant to s.8(2)(b) of the Unfair Dismissals Acts and s.27(5) of the Organisation of Working Time Act.

In a covering letter received with the notice of claim, the Claimant's Solicitors wrote:

"We are aware the application is outside the 6 month time limit but is within 12 months and the reason for the late application is that our client suffers from depression and was unaware of his rights and fearful of being exposed to additional legal costs due to his own difficult financial circumstances."

Counsel for the Claimant submitted that the Claimant was unaware of the company's disciplinary procedure and that he did not know about the procedure for unfair dismissals claims. Further, that the Claimant was unable to pay a solicitor for legal advice. Thirdly, that he was instructed that the Claimant had experienced psychological difficulties.

Counsel for the Respondent submitted, in the first instance, that ignorance of the law is no defence. She also submitted, which was not disputed, that the Claimant had first obtained employment with another employer and had then, from June to September 2007, returned to work with the Respondent. It was also submitted that the Claimant had, in September 2007, engaged another firm of solicitors to lodge a PIAB claim against the Respondent. Counsel referred the Tribunal to paragraph 24.32 of Dr Redmond's book on Dismissal Law in Ireland where the unreported decision of the Tribunal in *Murphy v. Citizens Information Call Centre* is cited. In *Murphy* it was submitted that the Claimant was medically unable to complete the application form during the six months after her dismissal. The Tribunal held that it would ordinarily require medical evidence from the Claimant's doctor to support such an application.

The Oireachtas has set down a short period of time within which unfair dismissals claims must be made. The Tribunal has been allowed a limited discretion to extend the time where it is satisfied that exceptional circumstances prevented the giving of notice within six months. That this is a limited discretion has been held by the Tribunal on many occasions, perhaps seminal in *Byrne v. PJ Quigley Ltd* [1995] ELR 205. Here the Tribunal held that the words "exceptional circumstances" are strong words and that the circumstances must be unusual and probably quite unusual. Further, the exceptional circumstances must have arisen within the initial six months otherwise they could not be said to have prevented the lodging of the claim.

In order to lodge a claim there is no requirement to engage a solicitor. Indeed, the legislation specifically provides that a person need not be legally represented at all by providing that a Claimant may be represented by a trade union official or any other person. Further, there are organisations, such as the Citizens Information Centres, that will advise on the procedures to be followed for lodging a claim without charge. Indeed, the secretariat of the Tribunal is available to give such information. No evidence of any attempt by the Claimant to ascertain the correct position was advanced. In such circumstances, the Tribunal is not satisfied that this constitutes an exceptional circumstance.

It is, of course, possible that a Claimant's medical condition can constitute an exceptional circumstance and that the said medical condition could operate to prevent a claim being lodged in time. Medical evidence may not be required to support this proposition in every case but it is likely to be required in most cases. It is possible that depression or psychological difficulties could operate to prevent a claim being lodged. However, these are conditions with a range of severity. They are also conditions that might or might not prevent a claim being lodged. In such circumstances, it seems to the Tribunal, medical evidence would be required to say that not only did

the medical condition exist but that it operated to prevent the Claimant from giving notice of his claim within the time delimited. No such evidence was adduced.

The Oireachtas has stipulated a test that is restrictive in its application and which requires a high threshold to be satisfied before time is extended. In this case the Claimant falls some way short of that threshold. On the basis of the foregoing, the claim under the Unfair Dismissals Acts, 1977 to 2001 is dismissed.

In respect of the claim under the Organisation of Working Time Act, 1997, the Tribunal is not satisfied that the that the Claimant has established that the failure to present the claim within six months was due to reasonable cause on the basis that no attempt was made to ascertain the correct position or to in any way explain, by way of medical report at the least, the bald assertions that he suffered from depression and psychological difficulties. Therefore, the claim under the Organisation of Working Time Act, 1997 is dismissed.

The Tribunal notes that the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 was withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

