

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee

TE82/2008

against the recommendation of the Rights Commissioner R-058529-TE-07/RG
in the case of:

Employer

under

TERMS OF EMPLOYMENT (INFORMATION) ACTS, 1994 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Ms. A. Gaule
Mr. S. O'Donnell

heard this appeal at Dublin on 22 October 2008

Representation:

Appellant:

In person

Respondent:

No appearance by or representation on behalf

The determination of the Tribunal was as follows: -

This case came before the Tribunal as a result of an appeal by the employee (the appellant) against the recommendation of the Rights Commissioner R-058529-TE-07/RG under the Terms Of Employment (Information) Acts, 1994 To 2001 in the case of an employer (the respondent).

Determination

At a scheduled hearing before a Rights Commissioner on 19 May 2008 neither the employee nor the employer attended and the Rights Commissioner recommendation states, "The complaint fails for lack of prosecution." The Tribunal found, by majority with Mr. O'Donnell dissenting that there was no jurisdiction to hear an appeal.

In his dissenting opinion Mr. O'Donnell found that section 8 of the Terms of Employment

(Information) Acts, 1994 to 2001 provides

An appeal under this section shall be initiated by the party concerned giving, within 6 weeks of the date on which the recommendation to which it relates was communicated to the party, a notice in writing to the Tribunal containing such particulars (if any) as may be specified in regulations under subsection (3) and stating the intention of the party concerned to appeal against the recommendation.

This provision was complied with in this case. A recommendation dated 12 June 2008 was issued by the Rights Commissioner stating “The complaint fails for lack of prosecution.” It was appealed by the employee. It is Mr. O’Donnell’s opinion that once a recommendation is issued it may be appealed, and in accordance with section 8 of the Acts the Tribunal should hear such appeal and adjudicate upon it, regardless of what may be stated in the recommendation. Moreover, in not doing so the Tribunal is denying the appellant a primary right of appeal.

The majority found as follows; the Tribunal informed the appellant that the Rights Commissioner had not heard any claim and that accordingly there was no finding of the Rights Commissioner to appeal. There can be no appeal against a case that was not heard. The finding of the Rights Commissioner effectively struck out the appellant’s proceedings. The proper course to be taken by the appellant is to apply to the Rights Commissioner to re-enter his claim. It is not a matter for the Tribunal. Furthermore a claim under the Terms of Employment (Information) Acts, 1994 to 2001 must be heard before a Rights Commissioner before it can be appealed to the Tribunal. No such claim was heard. To attempt to hear the claim at this stage would be in breach of the legislation. The Tribunal cannot look behind the recommendation of the Rights Commissioner in such a situation.

As previously stated, by the afore mentioned majority, the Tribunal finds that there is no jurisdiction to hear the appeal under the Terms of Employment (Information) Acts, 1994 to 2001

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)