

CORRECTING ORDER

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

CASE NO.

UD1050/06

Against

2 Employers

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. B. Kealy
Ms M. Finnerty

heard this claim at Dublin on 8th December 2008.

Representation:

Claimant: Mr. Augustin Mamba, 8 Sheepmoor, Blanchardstown, Dublin 15

Respondent: Ms. Aoife Newton, IBEC, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Determination

This Order corrects the original Order dated 12th March 2008 and should be read in conjunction with that Order.

In the Tribunal's Determination of 12th March 2008 the Tribunal stated that there had been no objection to a Rights Commissioner hearing the case. However, the claimant had in fact sent a letter to the Tribunal objecting to the Rights Commissioner hearing the case in respect of her second application in the matter which was inadvertently omitted from the file at the first hearing and was not considered by the Tribunal on that day. The claimant had first made an appeal to the Rights Commissioner from which there was no recommendation.

The Tribunal further determines that the claimant had made an appeal in the matter to the Rights Commissioner. The Rights Commissioner had been informed on behalf of the claimant that the

matter was settled and cancelled the hearing. Thus the matter was finalised before the Rights Commissioner. In the circumstances, the claimant is estopped from bringing a new case before the Tribunal by reason of the finalisation of the matter in the first case. A claimant cannot maintain two actions in the same cause or matter.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

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Employee

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I certify that the Tribunal
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Members: Mr. B. Kealy
Ms M. Finnerty

heard this claim at Dublin on 12th March 2008

Representation:

Claimant(s): Mr. Augustin Mamba, 8 Sheepmoor, Blanchardstown, Dublin 15

Respondent(s) Ms. Aoife Newton, IBEC, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Determination

This matter came before the Tribunal by way of a new application. From information supplied to the Tribunal by both parties it became evident that an application had been made to the Rights Commissioner in the same cause and in the same circumstances. The Rights Commissioner had seen of the case and had not issued a recommendation in respect of the matter. A party cannot maintain an unfair dismissal claim in front of the Rights Commissioner and the Employment Appeals Tribunal at the same time.

The Tribunal's jurisdiction only arises in an unfair dismissal claim where:

- (1) a claim is made by a party directly to the Tribunal and an objection from either party to a Rights Commissioner hearing the case has been made or
- (2) when a Rights Commissioner has issued a recommendation and a party appeals that recommendation to the Tribunal.

In this matter the claimant had not objected to the Rights Commissioner hearing the case and no recommendation had issued from the Rights Commissioner therefore this Tribunal must refuse jurisdiction in this case.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

