

## EMPLOYMENT APPEALS TRIBUNAL

### APPEAL OF:

Employee

- claimant

### CASE NO.

RP512/2008

against

Employer - respondent

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. B. O'Carroll  
Mr M. McGarry

heard this appeal at Castlebar on 3rd February 2009

#### Representation:

Appellant: Ms. Catherine Walsh BL instructed by Meadhbh McClean, Michael Moran & Co., Solicitors, Mountain View, Castlebar, Co Mayo

Respondent: Cathal Mc Greal BL instructed by Ms Sheila McConnell, Solicitor, Kilcullen, Co Kildare

The decision of the Tribunal was as follows:

At the beginning of the hearing counsel for the respondent explained that the even though a witness summons had being issued for the director of the company to attend, he was not present. The reason being that as he resided in Wicklow he was snowed in due to the bad weather.

#### **PRELIMINARY ISSUE**

At the beginning of the hearing Counsel for the claimant made an application to have a claim entered under the Unfair Dismissals Act 1977 – 2001, stating this had been agreed with her opposite number on the first day the case was listed for hearing. Counsel for the respondent stated that the only agreement was to allow such an application to be made to the Tribunal and raised the issue that the claim under the Unfair Dismissals Act 1977 – 2001 was out of time. The dismissal notice was received on the 26<sup>th</sup> October 2007, employment ended on the 4<sup>th</sup> November 2007, the claim form (T1A) was received in the Employment Appeals Tribunal on the 5<sup>th</sup> June 2008.

Counsel for the claimant outlined that she had originally applied for the T1A to be amended to include an unfair dismissal claim on the 21<sup>st</sup> October 2008; the division on that day directed her to apply afresh on the next day of the hearing. A letter issued to the respondents on the 20<sup>th</sup> October 2008 informing them of this intention to apply for an extension of time to include both a claim for unfair dismissal and minimum notice.

The claimant gave evidence that he had delayed in submitting his T1A form because he had been trying to contact the respondent to get his redundancy, the respondent's director would say he would get back to him about it but he never did. In the beginning of February 2008 he heard that other employees had received their redundancy. He thought he could sort out his redundancy first and then deal with the unfair dismissal later. He thought he had twelve months to lodge an unfair dismissal claims not six months.

### **Determination**

The Tribunal noted that the Application to amend an existing claim form, claiming under the Redundancy Payments Acts. The Tribunal notes that no claim form claiming Unfair Dismissal has been filed to date, and that it is common case that the claim form for Redundancy was received by the Tribunal on the 5<sup>th</sup> June 2008. The Tribunal accepts that the date of Dismissal was the 4<sup>th</sup> of November 2007.

The Tribunal noted the frank and honest evidence of the claimant that he intended originally to claim for Redundancy alone and only later decided to instruct his solicitors to submit a claim for unfair dismissal. That being the case, there was no question of the omission of a claim for unfair dismissal from the claim form filed being by way of inadvertence. As the first notice of any intention to bring such a claim appears to have been by letter dated 20<sup>th</sup> October 2008 it is clear that the claim is made outside the time limit of 6 months.

The Tribunal has jurisdiction to extend time as per section 7(2) (b) of the Unfair Dismissals (Amendment) Act 1993.

“If the rights commissioner or the Tribunal, as the case may be, is satisfied that exceptional circumstances prevented the giving of the notice within the period aforesaid, then within such period not exceeding 12 months from the date aforesaid as the rights commissioner or the Tribunal, as the case may be, considers reasonable.

The evidence of the Claimant disclosed no exceptional circumstances preventing the giving of notice within the initial 6 month period, and the Tribunal having considered the matter cannot find that any exceptional circumstances arose in this case.

The Tribunal therefore refuses the application to amend the claim form to include a claim for unfair dismissal’.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

