

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

– *claimant*

CASE NO.

UD216/2009

for implementation of the recommendation of the Rights Commissioner in the case of:

Employer

- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Flanagan BL

Members: Mr E Handley
Ms K Garvey

heard this claim at Dublin on 14th April 2009

Representation:

Claimant(s): Mr Brendan Toale, MacGeehin Toale, Solicitors, 10 Prospect Road,
Glasnevin, Dublin 9

Respondent(s): In person

(This case came before the Employment Appeals Tribunal by way of appeal for implementation of the rights commissioner recommendation; r-062709-ud-08/TB dated 26th September 2008).

The determination of the Tribunal was as follows:-

Determination:

Section 9 (2) of the Unfair Dismissals Acts, 1977 to 2003 states “*An appeal under this section shall be initiated by a party by giving, within 6 weeks of the date on which the recommendation to which it relates was given to the parties concerned, a notice in writing (containing such particulars (if any) as may be specified in regulations under section 17 of this Act for the purposes of section 8 (8) thereof) to the Tribunal and stating the intention of the party concerned to appeal against the recommendation and a copy of the notice shall be given to the other party concerned within the said period of 6 weeks.*”

The respondent highlighted that he wrote to the Tribunal by letter dated 26th September 2008 stating that he “would like to reserve the right to appeal” against the recommendation of the rights commissioner. (*The Tribunal Secretariat replied by letter dated 30th September 2008 enclosing*

form T1-B [Notice of Appeal] for completion). The respondent confirmed that he had not lodged an appeal form to the Tribunal, nor had he put the other party on notice of his intention to appeal, nor had he implemented the recommendation of the rights commissioners. He explained his presence before the Tribunal was to have a full re-hearing of the case.

The claimant's representative stated that he had written to the respondent on 17th November 2008 and in same was stated "The time allowed appealing the said decision had now elapsed and we have not received any notice of appeal". He highlighted that the Tribunal had no jurisdiction to extend the time to allow for such an appeal and in any event, there were no unusual or exceptional circumstances to allow for the extension of the time frame for bringing such an appeal.

The Tribunal, being satisfied that the recommendation had not being carried out by the respondent and as the time for bringing an appeal against the recommendation has expired and no such appeal has been brought, the only evidence the Tribunal can hear is in relation to the performance, or otherwise, of the recommendation. The Tribunal cannot, at this stage, re-open the merits of the case heard before the rights commissioner.

Accordingly, the Tribunal upholds the rights commissioners recommendation r-062709-ud-08/TB dated 26th September 2008 and makes a determination to like affect, that the respondent pays the claimant the sum of €4000.00 under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)