

EMPLOYMENT APPEALS TRIBUNAL

Claims of:
Employee-Claimant

Case No.
UD1264/2008
RP1080/2008

against
Employer -Respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001 REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. S. Ó Riordain B.L.

Members: Mr. D. Moore
Mr. B. Byrne

heard this claim at Carlow on 5th May 2009

Representation:

Claimant: XXXX

Respondent: Mr. Tom Mallon B.L. instructed by Arthur Cox, Solicitors, Earlsfort Centre,
Earlsfort Terrace, Dublin 2

The determination of the Tribunal was as follows:

Preliminary Issue

The Tribunal Chairman initially confirmed with both parties that they were satisfied that the respondent employer as identified in the Forms T1A and T2, respectively, was correctly identified as JM and not the relevant diocese.

The Chairman then referred to the advance material received from both parties and indicated that it would be necessary for the Tribunal to consider as a preliminary issue whether the claims under the unfair dismissals and redundancy payments legislation could be substantively heard and he hoped that it would be possible to deal with this matter in the one hour time frame (later extended to two hours) proposed.

The claimant and her representative (who was attending as a friend of the claimant) indicated their understanding that a substantive Tribunal hearing was to take place and they did not see that one hour would be sufficient for that purpose. They wanted a substantive hearing to proceed.

The Chairman explained that a Tribunal could not proceed to hear any case substantively unless it was satisfied that it had the power and jurisdiction to do so. In this instance, the dismissal had

taken place in 2002 and the claims were not lodged until 2008 so the issue of the Tribunal's jurisdiction to hear the cases quite clearly arose at the beginning of the hearing, irrespective of any views of the respondent, having regard to the maximum one year and two year time limits set out, respectively, in the unfair dismissals and redundancy payments legislation. It was also clear from the correspondence which the Tribunal and parties had received that the respondent was submitting that, in addition to the appeals being outside the statutory time limits, the Tribunal had no power to deal with the unfair dismissal case as it was precluded by statute to do so by virtue of the claimant's case for wrongful dismissal having been pursued in the courts. The issue of the Tribunal's powers and jurisdiction had to be addressed first and the Chairman asked the parties to address this issue in their submissions.

Respondent's Submission

The respondent's representative dealt with the alleged unfair dismissal's aspect first. He led the Tribunal through a detailed brief in which the background to and progress of the civil case taken by the claimant as plaintiff was outlined. This had resulted in a judgement by Ms Justice Mella Carroll in the High Court on 3rd February, 2004 (Record No 2002/10338P) in which all the reliefs and damages sought by the plaintiff were refused, her dismissal (notice of termination on grounds of redundancy dated 22 July 2002, with effect from 19th September, 2002) was upheld and her action dismissed. The Supreme Court, in an unanimous judgement delivered by Mr Justice Hugh Geoghegan on 9th April, 2008 (No. 106/04), upheld the judgement of Ms Justice Mella Carroll in the High Court and dismissed the plaintiff's appeal.

The respondent's representative submitted that the Tribunal, accordingly, had no power or jurisdiction to hear the appeal for unfair dismissal. It, firstly, was out of time having regard to the six-month (maximum 12-month) time limit after dismissal for appealing to the Tribunal set out in section 8(2) of the Unfair Dismissals Act, 1977 (as amended). Secondly, the claimant was not entitled to redress from the Tribunal by virtue of section 15 (3) of the 1977 Act (as amended) in view of her having taken a wrongful dismissal action at common law, and he drew the attention of the Tribunal to specific references by Ms Justice Mella Carroll in her High Court judgement in which she said that the plaintiff (claimant) had chosen to sue at common law: that there were other possibilities open to her: she could have initiated proceedings under the Unfair Dismissals Act, claiming unfair dismissal or under the Redundancy Payments Act claiming there was no valid redundancy or that she was unfairly chosen to be redundant and that, if successful, she would have been awarded statutory compensation.

In reply to an enquiry from the Tribunal about the objection (out of time) outlined in the Form T2 to the redundancy claim submitted by the claimant, the representative for the respondent indicated that, following the Supreme Court decision, the respondent was paying redundancy to the claimant and arrangements were in hand in this regard.

The respondent's representative indicated in conclusion that there had been unsuccessful attempts to resolve the matters by agreement but, when this failed, the claimant's case had been dealt with properly and fairly by the courts over a protracted period of time and that it was not open to the Tribunal to ignore the restrictions placed by statute on the exercise of its jurisdiction. It was indicated, in response to an enquiry from the Tribunal, that arrangements were in hand to pay the redundancy and to make pension provisions for the claimant.

Claimant's Submission

The representative for the claimant, and the claimant herself, submitted that the Tribunal had the power and authority to hear the unfair dismissal case.

The representative for the claimant gave background details of the claimant's employment and of the dismissal and subsequent civil case and submitted certain documentation in this regard. The claimant herself also spoke in this context. The claimant had been employed in 1974 as Secretary (later Diocesan Secretary) to the late Dr. L and, subsequently, this employment was continued by his successor, Dr R until it was terminated in the context of disagreement between the parties in relation to the terms which had been agreed when she left her previous state employment to take up her position in the diocese. The respondent, JM was the current Bishop of the relevant diocese.

The Chairman indicated that much of the material submitted in advance by the claimant and the comments now being made related to her concerns about the civil case taken and its outcome but it was not open to the Tribunal to reopen or overturn the civil case and the focus of the submissions to the Tribunal should be on the preliminary issue of whether or not the Tribunal had the legal power and jurisdiction to hear the unfair dismissal or redundancy appeals. While he appreciated that the Tribunal was an informal one rather than a court of law, and the Tribunal wanted to facilitate the claimant in making her submission, it was important that the concentration at this stage should be on the legal issues now arising.

The case made in favour of the Tribunal hearing the claim of unfair dismissal focused principally on what the claimant and her representative regarded as the inherent capacity of a Tribunal with jurisdiction in unfair dismissals to hear this case in which the claimant had in fact been unfairly dismissed and in which, in the view of the claimant, the actual decision to opt for a common law remedy and the progress and outcome of the case had been wrong and had constituted a fundamental injustice to the claimant. The claimant's representative in particular submitted that the rules of statutory interpretation properly interpreted and applied would allow the Tribunal to hear the appeal. Concepts of constitutional and natural justice antecedent and superior to all positive law underlay the administration of justice and the operation of all tribunals would, it was submitted, allow the Tribunal to hear the unfair dismissal appeal in a situation where there had been a clear injustice to the claimant and in which there had been no independent adjudication, with all the relevant witnesses called, on whether or not the claimant had been unfairly dismissed. The claimant, it was submitted, had suffered grievously and a remedy should, if the correct legal jurisprudence was followed as suggested, now be available from the Tribunal after taking the evidence from both sides in a substantive hearing.

The representative of the claimant indicated in relation to the redundancy appeal that, in fact, there was no genuine situation of redundancy and that there had been no proper consideration of the redundancy issue by the courts and that the claimant wished to highlight this.

In reply to a question from the Tribunal Chairman, the claimant confirmed, as indicated in earlier correspondence to the Tribunal in relation to the respondent's submission, her view that the actual date of dismissal was the date of the Supreme Court decision on 23rd April 2008 rather than the 2002 date and that, accordingly, the appeals to the Tribunal had been lodged within the time allowed. This was rejected by the representative for the respondent who said that the effect of the High Court decision as upheld by the Supreme Court was to confirm that the 2002 dismissal had been lawful.

The claimant in conclusion refuted the view put forward by the respondent that she had been fairly treated. In her view, she had greatly suffered as a result of the respondent's actions and she was seeking redress from the Tribunal. In response to an enquiry from the Tribunal Chairman, the claimant confirmed that she had nothing further to add.

Determination on Preliminary Issue

The Form T1A submitted by the claimant gave notice of appeal to the Tribunal by the claimant under the Redundancy Payments Acts, 1967 to 2007 and under the Unfair Dismissals Acts, 1977 to 2007 in respect of her dismissal in 2002. Dismissal notice was expressed in the Form T1A to have been received by the claimant on 25 July, 2002 and employment to have ended on 19 September, 2002. The notice of appeal to the Tribunal is dated 14 October, 2008 and this appeal was received by the Tribunal on 16 October, 2008.

The first issue that naturally arises for consideration at a hearing of the Tribunal (whether requested in advance in writing by the respondent or otherwise) in the light of these dates in 2002 is whether the Tribunal has the legal power and jurisdiction to hear these claims in 2009 having regard to the time limits set out in section 8 (2) of the Unfair Dismissals Act, 1977 (as amended) and in section 24 of the Redundancy Payments Act, 1967 (as amended). The effect of these provisions is that notice of a claim for redress under the Unfair Dismissals Acts must be given within a period of six months from the date of the dismissal: the Tribunal is empowered to extend this to a period not exceeding 12 months if it is satisfied that exceptional circumstances prevented the giving of notice within the six month period. In the case of alleged redundancy, a claim for a lump sum must be made within a period of 52 weeks from the date of dismissal or termination of employment: this may be extended to 104 weeks if the Tribunal is satisfied that the employee would have been entitled to the lump sum and that failure was due to a reasonable cause.

Logic dictates that this issue must be dealt with at the commencement of the hearing and before the Tribunal proceeds to substantively consider the claims. There is then, additionally, the submission on behalf of the respondent that the Tribunal can offer no redress in the unfair dismissal appeal having regard to the provisions of section 15 (3) of the Unfair Dismissals Act, 1977 (as amended) and the civil action at common law taken by the claimant and the relevant decisions of the High and Supreme Courts.

The respective position of the parties is set out in the submissions on behalf of the respondent and the then plaintiff (and current claimant). In relation to the unfair dismissal claim, the respondent relies on sections 8 (2) and 15 (3) of the Unfair Dismissals Act, 1977 (as amended) and the essence of the case put forward by the claimant's representative (with occasional contributions by the claimant herself) was that her action at common law had, for a variety of reasons referred to, by way of background information, in the oral presentation and in correspondence to the Tribunal, resulted in a fundamentally unfair outcome. The adoption of an approach by the Tribunal based on principles of constitutional and natural law and justice rather than legal positivism would, in the claimant's view, allow the Tribunal to investigate her dismissal and to hold a substantive hearing, notwithstanding the inhibiting legal provisions referred to by the respondent.

The claimant, finally, submitted that the date of dismissal on the T1A Form (19 September, 2002) was that selected by the employer but that, as interim and interlocutory proceedings put a stay on the date of dismissal and the Supreme Court Hearing did not conclude until April 2008, the appeal

notices to the Tribunal were submitted in time. This submission was rejected by the respondent and it absolutely clear to the Tribunal that the stay granted in earlier interlocutory proceedings did not survive the High or Supreme Court judgements and that actual dismissal was determined to have taken place on 19 September, 2002.

The claimant has submitted that the Tribunal has the authority, based on constitutional or natural law and justice principles, to conduct an investigation or hearing into this case. The Tribunal cannot accept this argument. The Tribunal has been set up under statute by the Oireachtas in pursuance of its constitutional powers as legislature. The Tribunal will always have regard to legal and constitutional rights in exercising its limited jurisdiction but it cannot assume extra legal authority to hold a hearing into an alleged unfair dismissal claim which is statute barred. Such an action would be in fundamental breach of its powers and would, quite rightly, be overturned by the courts.

The Tribunal understands the great upset and distress this entire matter has caused to the claimant but it is not within the legal powers of the Tribunal to ignore the specific legal restrictions set out in statute. Even apart from any alternative action at common law and the provisions of section 15(3) of the Unfair Dismissals Act, 1977 (as amended) as advanced by the respondent, the claim of unfair dismissal is out of time and the Tribunal is precluded by law from a substantive hearing in this case.

The respective position of the parties in relation to the redundancy claim is also set out in the submissions of both parties. The respondent indicates an intention to pay redundancy and the claimant appears to see a redundancy claim as a vehicle to highlight her view that no genuine situation of redundancy exists and that there has been an unfair dismissal. To the extent, however, that it might be intended by the claimant to pursue the redundancy claim included in the Form T1A, it suffers a similar statutory inhibition to the unfair dismissal claim in that it is out of time having regard to the provisions of section 24 of the Redundancy Payments Act, 1967 (as amended) and can not be dealt with by the Tribunal.

The Tribunal, therefore, determines that, in the absence of power or jurisdiction on the part of the Tribunal, the claim under the Unfair Dismissals Acts, 1977 to 2007 and the appeal under the Redundancy Payment Acts, 1967 to 2007 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)