

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

UD777/2009

CASE NO.

against the recommendation of the Rights Commissioner in the case of:

Employee

-v-

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL
Members: Mr J. Goulding
Ms K. Garvey

heard this appeal at Naas on 14th July 2009
and 29th October 2009

Representation:

Appellant: Mr. Adrian Kane, Branch Organiser,
Siptu, George's Street, Newbridge, Co Kildare

Respondent: Mr David Keane, Ibec, Confederation
House, 84/86 Lower Baggot Street, Dublin 2

This case is before the Tribunal by way of an employee, (the appellant) appealing a Recommendation of a Rights Commissioner, ref: r-055060-ud-07/JT under the Unfair Dismissals Acts, 1977 to 2007.

Determination:

The Tribunal has carefully considered the arguments and evidence put forward by both sides on the preliminary issue upon which a decision must be made before substantive evidence can be addressed.

The preliminary issue is one, which goes to jurisdiction. It is accepted that the Employment Appeals Tribunal can only hear an appeal against a Rights Commissioner Recommendation if a notice in writing (and in this case the employee prepared a standard form T1 B) is received by the offices of the Tribunal within six weeks of the date on which the recommendation to which it relates was given to the appellant and respondent parties.

The Rights Commissioner heard this Unfair Dismissals case on 31st January 2008. The subsequent recommendation was signed and dated 19th August 2008.

There is evidence to the effect that the recommendation was received by the parties on the 20th August 2008. The Tribunal accepts therefore that the six-week time limit runs from the 20th August 2008.

In these circumstance the notice in writing of appeal (or the T1B) had to be received in the Offices of the Tribunal on or before the 30th September 2008.

The Tribunal accepts that the employee's intention to appeal the recommendation of the Rights Commissioner was formed well within the six-week deadline. Indeed the T1B form was prepared and signed on or about the 17th of September 2008. Evidence in the form of a post book has been provided to demonstrate that the only letter acknowledged to be sent to the Tribunal in this period of time was on the 17th September 2008.

However, the inescapable fact is that the said T1B was date stamped the 01st October 2008 – one day out of time. The recognised practice in the Tribunal offices is for each document opened on a particular day is immediately date stamped with the Employment Appeals Tribunal stamp, with their date. The Tribunal is of the view that it is bound to accept the stamp as evidence of the fact that this notice of appeal was received and opened on the 01st October 2008. The Tribunal will not contradict this finding of fact.

The Tribunal has every sympathy with the employee who was desirous of reversing the findings of the Rights Commissioner. However, the Tribunal has no latitude in this regard and is bound by the constraints of the six-week time limit set down by law, S. 9 (2) of the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal therefore, has no jurisdiction to proceed to hearing.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)