

## EMPLOYMENT APPEALS TRIBUNAL

**APPEAL OF:**

*EMPLOYEE*

– *appellant*

**CASE NO.**

RP1767/2009

Against

*EMPLOYER*

- *respondent*

under

### **REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms D. Donovan

Members: Mr J. Browne  
Ms S. Kelly

heard this appeal at Carlow on 24th March 2010

#### **Representation:**

Appellant: Ms. Vicki Buckley, B.L., instructed by Liam Lysaght & Co, Solicitors, 9 St Brigid's Road, Clondalkin, Dublin 22

Respondent: Ms. Ruth Mylotte, B.L., instructed by Mason Hayes & Curran, Solicitors, South Bank House, Barrow Street, Dublin 4

The decision of the Tribunal was as follows:-

#### **Preliminary Issue**

In summary, the appellant lodged his claim with the Tribunal on 24<sup>th</sup> June 2009 outside the 52 week limitation period in which to bring a claim under the Redundancy Payments Acts 1967 to 2007. The Tribunal has a discretion to extend time up to 104 weeks provided the Tribunal is satisfied that the appellant would have been entitled to a lump sum and that the failure to bring the claim within the said 52 weeks was due to reasonable cause.

The Tribunal dealt with the failure of the appellant to lodge his claim within the statutory 52 week limitation period as a preliminary issue.

Evidence was adduced by the appellant that his failure was due to his ignorance of any entitlement to claim redundancy payment. The appellant adduced evidence that he only became aware in May 2009 that he may have an entitlement to redundancy payment. The appellant said it took him about 3 weeks to organise his claim. The appellant adduced evidence that he was told by the respondent that he was not entitled to pension. In his written submission to the Tribunal the appellant states that when he enquired of the respondent in 2008 regarding redundancy he was

given a non-committal reply. The appellant adduced evidence that he was told by a Union representative that he was not entitled to redundancy.

Evidence was adduced by the respondent that it was disingenuous of the appellant to plead ignorance of the law in circumstances where he had legal representation in a High Court action against the respondent and in which said action he had elected to and maintained a claim for loss of redundancy.

Evidence was adduced by the respondent that the contract of the appellant had been frustrated by his incapacity to work since 1993. Evidence was also adduced by the Respondent that the appellant had compromised any entitlement he may have had to a redundancy sum by the settlement entered into between the parties in the appellant's High Court action against the respondent.

**Determination:**

The Tribunal indicated that issues regarding any frustration of the appellant's contract and any compromise of his claim for redundancy payment could be dealt with if there was to be a hearing on the substantive matter.

The Tribunal having carefully considered the evidence adduced at the hearing of the preliminary issue. The Tribunal finds that the appellant did put forward reasons for his failure to bring his claim within the said 52 weeks. However, the Tribunal is not satisfied that the failure was due to reasonable cause and even if the Tribunal was so satisfied the Tribunal does not consider it appropriate in the circumstances to exercise its discretion in favour of granting the appellant an extension of time. Therefore, the claim under Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

