

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE  
RP969/2009

UD860/2009

against  
EMPLOYER  
under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.  
Members: Mr P. Pierce  
Mr C. Ryan

heard this claim at Dublin on 21st May 2010

Representation:

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Claimant:

Mr. Gavan MacKay, Spelman Callaghan, Solicitors,  
Corner House, Main Street, Clondalkin, Dublin 22

Respondent:

Noel Smyth & Partners, Solicitors, 22 Fitzwilliam Square, Dublin 2

The determination of the Tribunal was as follows:-

From the outset the claim under the Redundancy Payments Acts, 1967 To 2007 was withdrawn. The form T1A was lodged with the Employment Appeals Tribunal more than six months after the date of termination of employment and therefore a preliminary issue arose as to whether or not the Tribunal had jurisdiction to hear the claim under the Unfair Dismissals Acts, 1977 To 2007.

#### **Claimant's case**

The claimant was informed that he was being made redundant and he sought reasons why this was happening but received no answers at the time. He was let go on 10<sup>th</sup> Sept. '08 and paid a redundancy lump sum. Within three months of the end of his employment he attended a funeral which was also attended by former colleagues and was advised that there were individuals doing his job. He attended the hotel in March '09 and satisfied himself that his job was being done and one week later on 31<sup>st</sup> March '09 he instructed his legal representative to file a claim.

The respondent had duped the claimant into believing that his job was redundant. Therefore the claimant held that the six month period should be from the date on which he had knowledge that a genuine redundancy situation did not exist at the time of his dismissal. To have entered into

litigation before having such knowledge would have been unreasonable.

**Respondent's case**

The respondent informed the claimant about the impending redundancy in July '08 and let him go on 10<sup>th</sup> September '09. There was nothing preventing the claimant from making his own reasonable enquiries in relation to this redundancy. Nor was there anything preventing him from lodging a claim for unfair dismissal within the permitted time period. There was no medical evidence or psychological reasons preventing him from doing so. The claimant did not even think to drive past and see for himself whether another person was doing his work.

The respondent held that the claimant "did have knowledge" between September and December '08 and that this knowledge was bolstered by information he received in December '08 and that it is not the purpose of legislation to allow for tardiness.

**Determination**

The claimant had constructive knowledge of the circumstances in his former work place from the point at which his employment was terminated. He failed to act accordingly within the period of time permitted in the acts. The Tribunal is satisfied that exceptional circumstances did not exist within the meaning of section 8(2) of the Unfair Dismissals Act, 1977. Accordingly the Tribunal declines jurisdiction.

It is common case that the H.R. Manager dismissed the claimant and she did so by reason of purported redundancy. Her absence from the hearing, while regrettable given that she was required to attend by issue of subpoena, is inconsequential.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

