

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**  
EMPLOYEE

- appellant

**CASE NO.**  
RP575/2009  
UD77/2010

MN83/2010

against

EMPLOYER

under

### **REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. D. Morrison  
Ms. A. Moore

heard this claim at Donegal on 23rd April 2010

#### Representation:

Claimant: Mr. Ian McKenna, O'Donnell McKenna, Solicitors, Waterloo Place, Donegal Town, Co. Donegal

Respondent: Mr. Padraig O'Grady, IBEC, 3<sup>rd</sup> Floor, Pier one, Quay Street, Donegal

The determination of the Tribunal was as follows:-

#### **Preliminary Issue**

The appellant originally lodged his T1A with the Employment Appeals Tribunal on the 11<sup>th</sup> March 2009 seeking redress under the Redundancy Payments Acts 1967 to 2007. The appellant through his representative lodged a further T1A on the 22<sup>nd</sup> January 2010 by fax and by letter on the 25<sup>th</sup> January 2010. This additional T1A included claims under the Unfair Dismissals Act 1977 to 2007 and the Minimum Notice and Terms of Employment Acts 1973 – 2005.

The appellant's representative explained that the appellant at the time of his lay off did not know that he could have submitted a claim under the Unfair Dismissals Act 1977 to 2007. The body, which provided the appellant with advice, did not bring this to his attention and had advised

him to submit a RP9 to his employer, following on with a T1A to the Employment Appeals Tribunal. The appellant's representative thought that he should not be prejudiced because of bad advice he received from a state sponsored body. The respondent representative stated that the appellant had set his own termination date by submitting the RP9 form to the respondent, which was the 22<sup>nd</sup> January 2009. He also maintained that the advice given to the appellant was correct. The respondent's representative maintained that the T1A that was lodged by fax on the 22<sup>nd</sup> January 2010 was out of time. The appellant's representative maintained that the T1A lodged on the 22<sup>nd</sup> January 2010 was an amendment to the original T1A lodged. The appellant gave evidence regarding the circumstances of lodging the T1A and the advice he had received.

### **Determination**

The Tribunal ruled on the preliminary issue that the claim was lodged outside of the six-month time limit from the date of termination of employment imposed by the Unfair Dismissals Acts, 1977 to 2001. There were no exceptional circumstances as described by the said Acts to cause this delay. The Tribunal, therefore, rules that it does not have jurisdiction to hear the claim under the Unfair Dismissals Acts, 1977 to 2007.

The respondent conceded that a redundancy situation existed. The Tribunal awards the appellant a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria:

Date of Birth:	28 <sup>th</sup> May 1973
Date of Commencement:	20 <sup>th</sup> April 1998
Date of Termination:	22 <sup>nd</sup> January 2009
Gross Pay:	€985.47

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period. It should be noted that a statutory weekly ceiling of €600.00 applies to payments from the Social Insurance Fund.

As the appellant submitted a RP9 form, he is deemed to have voluntarily left his employment and therefore is not entitled to notice under the Minimum Notice and Terms of Employment Acts 1973 to 2005, accordingly the Tribunal dismissed this claim.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

