

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE – claimant

CASE NO.
UD1222/2009
MN1220/2009

against
EMPLOYER – respondent

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D Hayes BL

Members: Mr P Pierson
Mr J Moore

heard this claim at Mullingar on 1st April 2010 and 13th July 2010

Representation:

Claimant(s) : Ms Colette Egan BL
Mr Frank Sugrue, Solicitor,
Byrne Carolan Cunningham, Solicitors
Oak House, 39/41 Mardyke Street, Athlone, Co Westmeath

Respondent(s) : Mr Gerald O'Donnell, Solicitor,
Smyth O'Brien Hegarty, Solicitors
24 Lower Abbey Street, Dublin 1

The determination of the Tribunal was as follows:

The claimant's employment ended on the 13th November 2008. His claim was submitted on the 4th June 2009, some three weeks outside the six-month statutory time-limit. At the outset of the hearing an application was made on his behalf to extend time. This was dealt with as a preliminary issue.

The claimant is Polish. He attended his solicitor's office on the 29th January 2009 and spoke to a Polish interpreter employed on a part-time basis by his solicitor. The interpreter was to speak to the solicitor and then contact the claimant. This was not done. The interpreter at the time was pregnant. On the 27th April 2009, she became very ill and went into labour with life-threatening complications. A replacement interpreter was engaged and commenced work on the 20th May

2009. Towards the end of May, the new interpreter came across the file and realised that the claimant had not been contacted and organised that he sign a T1A for submission to the Tribunal.

It was submitted on the respondent's behalf that the gap of three months between instructions being taken and the interpreter's labour does not constitute an exceptional circumstance. It was submitted on the claimant's behalf that there was a causative link between the illness and the failure to submit the claim on the basis that had the interpreter not taken ill she would have been in contact with the claimant.

The claimant's submission might have borne more weight had there been a gap of weeks rather than months between taking instructions and falling ill. The Tribunal is not satisfied that there was any causative link between the two events, namely falling ill and failing to lodge the claim within time. There was no exceptional circumstance such as to justify the extension of time. It has frequently been noted that the threshold for the extension of time was set at a high bar by the Oireachtas. The claimant in this case does not meet it.

The claim under the Unfair Dismissals Acts, 1977 to 2007 is therefore dismissed.

The claimant's representative withdrew the claimant's appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 on the second day of hearing.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)