

Correcting Order

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF

CASE NO.

EMPLOYEE

UD220/2008

Against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Flanagan BL
Members: Mr J Horan
Mr F Barry

heard this claim at Dublin on 11th June 2008 and 15th July 2009

Representation:

Claimant:

Mr Andy Smith, BATU, 13 Blessington Street, Dublin 7

Respondent:

Mr Kieran Wallace, KPMG, Saint Stephens Green, Dublin 2

The determination of the Tribunal was as follows: -

This order corrects the original order dated 21st September 2009 and should be read in conjunction with that order.

The Tribunal has received correspondence dated 28th July 2010 on behalf of the official liquidator of the respondent company asking that the original order be corrected by the amendment of the date 10th January 2009 to 10th January 2008.

The Tribunal also received correspondence from the claimant consenting to this date change being made.

The Tribunal therefore determines that where the date of 10th January 2009 appears in the original order that date shall be amended to 10th January 2008.

For the avoidance of doubt the sentence which appears as

“The Tribunal finds that the claimant was made redundant out of order and ought not to have been made redundant before 10th January 2009.”

in the original order shall be replaced with the sentence

“The Tribunal finds that the claimant was made redundant out of order and ought not to have been made redundant before 10th January 2008.”

For the avoidance of doubt the sentence which appears as

“The Tribunal makes this award in accordance with the contention of the claimant that the claimant would have been made redundant on 10th January 2009.”

in the original order shall be replaced with the sentence

“The Tribunal makes this award in accordance with the contention of the claimant that the claimant would have been made redundant on 10th January 2008.”

For the avoidance of doubt the sentence which appears as

“As there was no formal application under the Redundancy Payments Acts before the Tribunal in respect of a claim for redundancy occurring on 10th January 2009 the Tribunal is not making an award under the Redundancy Payments Acts for a redundancy occurring on that date.”

in the original order shall be replaced with the sentence

“As there was no formal application under the Redundancy Payments Acts before the Tribunal in respect of a claim for redundancy occurring on 10th January 2008 the Tribunal is not making an award under the Redundancy Payments Acts for a redundancy occurring on that date.”

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)

EMPLOYMENT APPEALS TRIBUNAL

Claim of:
EMPLOYEE

Case No.
UD220/2008

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Flanagan BL

Members: Mr J Horan
Mr F Barry

heard this claim at Dublin on 11th June 2008

Representation:

Claimant: Mr Andy Smith, BATU, 13 Blessington St, Dublin 7

Respondent: Mr Breffni O'Neill, Construction Industry Federation, Construction House,
Canal Road, Dublin 6

The determination of the Tribunal was as follows:

Preliminary Issue:

It was agreed between the parties that the claimant was dismissed on 1st June 2007.

The representative for the respondent made a submission to the Tribunal that the claim had been lodged outside the stipulated six-month time limit as required by the Unfair Dismissal Acts. The claimant had lodged his claim with the Rights Commissioners service on the 6th December 2007. The respondent objected to the matter being heard by a Rights Commissioner and so the matter came before the Tribunal.

The representative for the claimant stated that the claim had been lodged outside the stipulated six-month time limit for reasons connected with the death on 29th June 2007 of a close relative of the claimant.

The claimant, who was a shop steward, disputed that he was fairly selected for redundancy. The respondent had operated a system of selection for redundancy on the basis of first in and last out. For the claimant it was stated that there had been a union agreement whereby the shop steward is the last person to be selected but the respondent denied that there was such an arrangement. For the claimant it was also stated that he had been made redundant before other individuals with less service.

The claimant had been given a cheque for redundancy but this was withdrawn on 22nd June 2007 to allow for further discussions. The claimant had disputed his place on the list of employees ranking them by order of selection for redundancy. When the discussions were completed the respondent remained unwilling to reverse its decision to select the claimant for redundancy.

The claimant was unhappy with the outcome of the discussions. However, he was not in a position, after the death of his relative, to speak to his representative about the outcome until August 2007. At that time he was not in a position to lodge a claim against the respondent. The claimant next spoke to his representative in November 2007. The claimant was unavailable between August 2007 and November 2007 due to personal difficulties associated with the death of his relative. He was unable to complete the relevant forms until December 2007. He was in a position to take to take up employment from the 1st August 2007.

The representative for the claimant stated that the claimant should have been joint fourth on the list of employees, rather than ninth. The person in fourth place was made redundant in January 2008. It was accepted by the claimant's representative that this employee was made properly redundant.

Determination on Preliminary Issue:

The Tribunal has carefully considered the submissions of both parties. The Tribunal finds that the effects of the death of a close relative upon this claimant constituted exceptional circumstances which prevented the claimant from lodging his claim to the Rights Commissioners service within the six-month time limit. The Tribunal having found such circumstances existed, extends the time limit from six months to twelve months as set out in Section 7(2)(b) under the above Acts and finds that it has jurisdiction to hear the substantive case.

Normally a claimant may only be compensated for loss during the period in which the claimant is available for work. The Tribunal wishes the parties to consider the extent to which the claimant could be said to be available for work during the period in which he was so affected by the death of a relative that he was prevented from lodging his claim under the Unfair Dismissals Acts. In particular the Tribunal wishes the parties to address the issue of loss and whether the period of loss for which compensation could be awarded is limited to the period between the date on which the claimant regained the capacity to lodge his claim and the date upon which the claimant believes he would have been made redundant had the redundancies occurred in the order which the claimant believes to be correct.

The Tribunal notes the receipt of a letter received on 20th January 2009 from the claimant. The

Tribunal has considered the content of the letter and is satisfied that it is not necessary to take into account of the contents of this document, which is furnished for the purpose of advancing the claimant's case in relation to the preliminary point, as the claimant has succeeded in any event.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF: CASE NO.

David Byrne, 30 Jugback Crescent, Swords,
Co. Dublin - *claimant* UD220/2008

against

Walsh Maguire & Co Limited (In Liquidation), c/o Mr Kieran Wallace, KPMG,
St Stephen's Green, Dublin 2 - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Flanagan BL

Members: Mr J Horan
Mr F Barry

heard this claim at Dublin on 11th June 2008 and 15th July 2009.

Representation:

Claimant(s): Mr Andy Smith, BATU, 13 Blessington St, Dublin 7

Respondent(s): Mr Kieran Wallace, KPMG, St Stephen's Green, Dublin 2

The determination of the Tribunal was as follows: -

Preliminary Point

The Tribunal was advised that since the first hearing on 11th June 2008 the status of the respondent has changed to that of being a company in liquidation from 3rd April 2009 and the Tribunal therefore amends the title and address of the respondent accordingly.

Determination

The Tribunal determines that the claimant was unfairly selected for redundancy on 1st June 2007 and the Tribunal therefore awards reinstatement to the claimant under the Unfair Dismissals Acts 1977 to 2007.

The Tribunal finds that the claimant was made redundant out of order and ought not to have been made redundant before 10th January 2009.

For the purpose of calculating the arrears of earnings the Tribunal makes the following findings of fact: -

The Tribunal finds that the claimant was unavailable for work from 1st June 2007 until 6th December 2007 due to personal difficulties associated with the death of a close relative.

The Tribunal finds that the claimant was in receipt of a gross weekly wage of €1300.00

The Tribunal finds that the claimant has already received and cashed a cheque in the sum of €3660 from the respondent, which sum shall be taken into account in the calculation of this award.

The Tribunal makes this award in accordance with the contention of the claimant that the claimant would have been made redundant on 10th January 2009.

The Tribunal finds that the claimant was born on 11th March 1974 and that he commenced working for the respondent on 30th August 2004.

As there was no formal application under the Redundancy Payments Acts before the Tribunal in respect of a claim for redundancy occurring on 10th January 2009 the Tribunal is not making an award under the Redundancy Payments Acts for a redundancy occurring on that date. Should a dispute arise between the parties such that they require a determination under those acts then the parties may make such application in the usual manner and it would be appropriate for the parties to be mindful of time limits.

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Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)