

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - *appellant*

CASE NO.

UD1941/2009

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney BL

Members: Mr T. Gill
Ms H. Henry

heard this appeal at Galway on 13th January 2011

Representation:

Appellant(s) : In Person

Respondent(s) Ms Ciara Dooris, Tughans, Solicitors, Marlborough House, 30
Victoria Street, Belfast, BT1 3GS

This case came before the Tribunal by way of an appeal by the employee against the recommendation of a Rights Commissioner under the Unfair Dismissals Acts 1977 to 2007 ref r-075422-ud-09

Respondent's Case

The respondent submitted that the Tribunal did not have jurisdiction to hear the claim as the claim was submitted to the Rights Commissioner almost 10 months after the effective date of the termination of the appellant's employment. Section 8 (2) of the Unfair Dismissal Acts prescribes that a claim must be made within 6 months of the date of the relevant dismissal. However if the Rights Commissioner or the Tribunal, as the case may be is satisfied that exceptional circumstances

existed which prevented the claim being lodged, this period may be extended to 12 months. The respondent submitted that the circumstances put forward by the appellant as preventing him from bringing his claim within the 6 month period did not constitute exceptional circumstances and the recommendation of the Right Commissioner should be upheld.

Appellant's Case

The appellant gave evidence that following the termination of his employment with the respondent company in May 2008 he obtained alternative employment in June 2008. This employment was of a temporary nature and continued until 9 August 2008. He told the Tribunal that he spent considerable time travelling to Dublin meeting recruitment agencies seeking employment. He also spent considerable time compiling CV's. He separated from his wife on 11 March 2008 and moved out of the family home on 31 May 2008. He has three children and this was a time of considerable stress for him and his family. He had to tend to the needs of his children and look after their schooling issues. He was focussed on supporting his children. His ex-wife then suffered a back injury in October 2008. This injury necessitated surgery in January 2009 and she was on certified sick leave from her workplace from November 2008 until June 2009. As a result of this he practically became a full-time carer for his ex-wife and their children as they had no other support mechanisms in place. It was a very stressful time for him and he submitted that these grounds justified exceptional circumstances preventing him from lodging his claim in time.

Determination

After carefully listening to and considering the evidence tendered the Tribunal finds as follows.

The appellant relied on three grounds justifying exceptional circumstances which prevented him from lodging his claim in time. The appellant stated his main priority in the immediate aftermath of his dismissal was getting another job. He stated that a considerable amount of his time, he being in alternative employment until August 2008 was spent travelling to Dublin trying to secure further employment. The Tribunal does not consider this as exceptional circumstances preventing him from lodging his claim.

Secondly he stated that, in or about March 2008 he obtained a decree of judicial separation and he was obliged to vacate the family home in or about 31 May 2008. Thereafter he stated he was responsible for his children's needs as a result of his judicial separation from his wife. This was the conclusion of matrimonial proceedings, and the Tribunal does not accept that this and him dealing with his children's needs, and the stress that all of the above brings was such to prevent him lodging his claim in time.

Thirdly he stated that the fact that his ex-wife had a back injury and subsequent surgery necessitating help at home and help with the parties children from a period beginning 28 October 2008 to May 2009 justify exceptional circumstances preventing him from lodging his claim on time.

Taking all the circumstances together the Tribunal do not find that they constitute exceptional circumstances and whilst the Tribunal has every sympathy with the appellant it finds it has no jurisdiction to hear the claim. It must follow therefore that the appeal against the recommendation of the Rights Commissioner fails. The Tribunal upholds the recommendation of the Rights Commissioner and dismisses the claim under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

