

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – *appellant*

CASE NO.
UD1639/2009

against the recommendation of the Rights Commissioner in the case of:
EMPLOYEE
v
EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P O'Leary BL

Members: Mr A O'Mara
Mr J Moore

heard this appeal at Drogheda on 14th October 2010 and 21st February 2011

Representation:

Appellant(s): Mr Kieran Fitzpatrick
MacGuill & Company, Solicitors
5 Seatown, Dundalk, Co Louth

Respondent(s): Mr Eamonn McCoy
IBEC
Confederation House, 84/86 Lower Baggot Street, Dublin 2

This case came before the Tribunal by way of an employee appealing the recommendation of a Rights Commissioner under the Unfair Dismissals Acts ref: (r-053712-ud-07/JC).

The determination of the Tribunal was as follows:-

The respondent's representative made a preliminary application that the Tribunal did not have jurisdiction to hear the appeal as the application form submitted to the Rights Commissioner was lodged after the six-month deadline.

The appellant's employment ceased on January 4th 2007. She lodged a claim under the Unfair Dismissals Acts with the Rights Commissioner Service on May 23rd 2007. The respondent named on that form replied by stating that they had not been the appellant's employer. The claimant's representative explained that on receipt of this correspondence they submitted a second application form naming the above-named respondent as the appellant's employer. This form was submitted on July 17th 2007.

The Tribunal asked the respondent's representative to outline why section 39 of the Organisation of Working Time Act, 1997, did not apply. The respondent's representative submitted that the appeal being heard had the correct respondent named and therefore there was no scope to apply section 39(2) of the Organisation of Working Time Act, 1997.

The appellant's representative submitted that on April 27th 2009 at a Rights Commissioner hearing in Kildare the respondent named on the application form lodged in May 2007 appeared. The current respondent was not present. It became apparent that the original respondent was not the correct employer and that there was no need for said respondent to appear at any further hearing dates. Accordingly, the claim against the original respondent was withdrawn on the April 27th 2009. At the next Rights Commissioner hearing on June 9th 2009 the appellant's representative sought to have the respondent's name amended, but this application was rejected.

Determination:

The Tribunal gave careful consideration to the submissions made by the parties and noted in particular the reference made by the claimant's representative, which confirmed the final paragraph of the Rights Commissioner's recommendation to the effect that the claimant formally withdrew the claim made in April 2007. This ruled out the implementation of section 39 of the Organisation of Working Time Act 1997 from the jurisdiction of the Tribunal which left only the application of section 8(2) of the Unfair Dismissals Act, 1977, as amended by section 7(2) of the Unfair Dismissals (Amendment) Act, 1993, which states that:

- 2) A claim for redress under this Act shall be initiated by giving a notice in writing (containing such particulars (if any) as may be specified in regulations under section 17 of this Act made for the purposes of subsection (8) of this section) to a rights commissioner or the Tribunal, as the case may be –*
- (a) within the period of 6 months beginning on the date of the relevant dismissal, or*
 - (b) If the rights commissioner or the Tribunal, as the case may be, is satisfied that exceptional circumstances prevented the giving of the notice within the period aforesaid, then, within such period not exceeding 12 months from the date aforesaid as the rights commissioner or the Tribunal, as the case may be, considers reasonable”.*

While the Tribunal accepts that there were exceptional circumstances in this case it is quite clear from the evidence that the claimant knew or should have known who the correct employer was in this case. Therefore, the exceptional circumstances referred to above did not prevent the claimant from putting in her claim. The Tribunal is surprised that the claimant withdrew her claim made in April 2007 rather than seeking to have the employer's name amended in accordance with section 39 of the Organisation of Working Time Act, 1997, before the Rights Commissioner. The Tribunal therefore has no jurisdiction to hear this case and confirms the recommendation of the Rights Commissioner.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)