

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM OF:**  
EMPLOYEE

**CASE NO.**  
UD2504/2009

against

EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. D. Morrison  
Ms. R. Kerrigan

heard this claim at Donegal on 25th March, 4th June, 4th October and 2nd December 2010

**Representation:**

Claimant : Mr. Francis Gillespie, Dunlevy & Barry, Solicitors,  
Quay Street, Donegal Town, Co Donegal

Respondent : HR Consultant of Respondent

The determination of the Tribunal was as follows:

**Preliminary Issue**

The secretariat of the Employment Appeals Tribunal received a completed T1-A form from the claimant on 8 June 2009. Among the details on that signed form was the date of termination of his employment- 26 February 2008. Two days later the secretariat wrote to the claimant informing him that based on those dates his application appeared to be out of time. His application however continued to be processed. This preliminary issue addressed in the first instance considered whether the Tribunal had jurisdiction to hear this case. Certain dates needed to be established to allow the Tribunal to consider whether it had jurisdiction to extend time in this case.

## **Claimant's Case**

The claimant was employed as a fish processing operative with the respondent. While he described his status as a full time employee he nevertheless stated his job was of a seasonal nature. His actual work ceased in early spring of each year and resumed again in the autumn. He was issued with a P45 for social welfare and taxation purposes to cover that period. Due to an incident in late February 2008 involving his colleagues a foreman at the factory told the claimant not to report for work later that month. He received his P45 shortly after that message.

Apart from the claimant all his work colleagues were asked to report back to work in September 2008. He then lodged a complaint against the respondent in the form of an application to the Labour Relations Commission (LRC) under the Unfair Dismissals Acts. The claimant listed his date of termination as late February. Two P45s were submitted during that process with two different dates of cessation, namely 24 February and 23 May 2008. In February 2009 the LRC informed the respondent that their objection to a hearing on this case was invalid due to its late submission. A hearing date was being arranged at that time. Due to further talks between the claimant and the respondent it was agreed by all parties that the claimant was to return to work in early spring 2009. The claimant signed a form of withdrawal of the claim. The claimant gave evidence that he was telephoned by a staff member of the Labour Relations Commission to verify that he had signed the form and that he was withdrawing his claim. He stated that during the conversation he was advised that he could re-enter his claim at a later date if he encountered further difficulties with the respondent. In the event, that arrangement collapsed on its initial outing as the claimant felt the conditions attached to his return were not implemented. He felt his only option then was to terminate his employment with the respondent. As he had withdrawn his original application to the LRC in writing consequently no hearing took place into his original complaint.

The claimant told the Tribunal that his interaction with the LRC this time that he formed the impression from them that his initial and later second application were submitted in time and that his complaint would be addressed by a Rights Commissioner. The witness said that he was advised by staff in the LRC that he could re-enter his application in the event of any difficulty and that the time for receiving a hearing on his case was extended. He labelled his second application "re-entry" and that form was received by the LRC on 13 March 2009. The claimant again stated that his date of dismissal was 24 February 2008. On this occasion the respondent objected to a hearing by a Rights Commissioner in time and accordingly the LRC wrote to the claimant's solicitor on 29 April 2009 informing him of that development. That correspondence was received by the addressee just prior to 14 May 2009. That solicitor then wrote to the secretariat of the Employment Appeals Tribunal who in turn replied to him on 22 May seeking a fully completed T1-A form. This form was recorded as received by that office on 8 June 2009.

## **Respondent's Case**

A former clerical officer at the LRC identified by the claimant as dealing in part with his application said she had no recall of this particular case. Her role in that office was exclusively of an administrative nature and she had no training, knowledge, or authority to act outside that function.

The director of the Corporate Services division and secretary to the Labour Relations Commission

told the Tribunal that while he had no input into the processing of this case he was nevertheless familiar with it. The witness emphasised that neither he nor the staff at the Labour Relation Commission's Office give advice to the public. Their role is to give assistance, information and guidance to callers. All legal matters concerning cases are a matter for particular Rights Commissioners who directly deal with cases when they come up for hearing. That includes the possible granting of extension of time on late applications subject to the current and relevant legislation.

To the witness's knowledge there is no legal provision setting out a procedure for a withdrawal of application to the LRC. When an applicant formally withdraws their case before a Rights Commissioner then the office closes the file as the complaint is then considered finalised. In cases where the withdrawal takes place before a hearing has been scheduled the LRC require a written confirmation. In this case the claimant withdrew his original complaint in writing to the LRC on 18 February 2009. There is no procedure to re-enter a case. The claimant's second application was treated as a new case.

## **Determination**

The claimant has confirmed in evidence that his date of dismissal was February 24<sup>th</sup> 2008. The Tribunal find the claimant did not initiate his original claim under the Unfair Dismissals Acts, 1977 to 2007 until November 7<sup>th</sup> 2008 when the claim was filed with the LRC. It is therefore clear that this claim was initially outside the 6-month time limit and the claimant would have to prove that exceptional circumstances existed preventing the giving of notice within the initial period of 6 months following the dismissal.

The respondent initially objected to the claim being heard by a Rights Commissioner but the LRC deemed their objection to be late and the case remained within the remit of the LRC and was to be allotted a hearing date. Some time prior to any scheduled hearing being due the respondent and the claimant met and agreed that the claimant would return to work on terms and the claimant signed a letter of withdrawal. This letter was a clear withdrawal of the claim. The claimant gave evidence that he was telephoned by a staff member of the Labour Relations Commission to verify that he had signed the form and that he was withdrawing his claim. He stated that during the conversation he was advised that he could re-enter his claim at a later date if he encountered further difficulties with the respondent.

The claimants' return to work did not go smoothly and he sought to "re-enter" his claim and sent in a fresh claim form to the Rights Commissioners marked "re-entry" by him in and around March 13<sup>th</sup> 2009. The respondent again objected to the Rights Commissioner hearing the claim, on this occasion within time, and the claimant was then referred to the Employment Appeals Tribunal. The claimant furnished a T1A claim form to the Employment Appeals Tribunal, which was received on June 8<sup>th</sup> 2009.

The first issue the Tribunal has to determine is whether it has jurisdiction to deal with the claim. The Tribunal is a creature of statute and cannot act outside the statutory powers created by the Oireachtas. The Tribunal is satisfied from evidence heard that the claimant withdrew his claim to the LRC on February 18<sup>th</sup> 2009 and that by doing so was precluded from taking any further action based on his original application to the LRC. Therefore the claim form filed with the Rights Commissioner on March 13<sup>th</sup> 2009 sets out the claim that has to be ruled on by the Tribunal.

As on the claimant's own evidence he was dismissed on February 24<sup>th</sup> 2008, the claim has therefore been made more than 12 months after the date of dismissal and the Tribunal has no jurisdiction to extend the time limit beyond 12 months.

Then Tribunal has no jurisdiction to hear the claim under the Unfair Dismissals Acts, 1977 to 2007, and it is hereby dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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