

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE
-appellant

CASE NO.
UD619/2010

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

EMPLOYEE
-v-
EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan BL
Members: Mr J. Hennessy
Mr F. Dorgan

heard this appeal at Kilkenny on 27th September 2011

Representation:

Appellant: In person

Respondent: Mr. Jim Healy, IBEC, Confederation House,
Waterford Business Park, Cork Road, Waterford

This case is before the Tribunal by way of an employee appealing the
Recommendation of a Rights Commissioner ref: r-074692-ud-09/DI.

Background:

This claim came before the Tribunal by way of an employee (the appellant) appealing a Rights Commissioner's Recommendation under the Unfair Dismissals Acts 1977 to 2007. The Recommendation of the Rights Commissioner was conveyed to the parties on 30th November, 2009.

A Form T1A (claim form) was received by the Tribunal secretariat from the appellant on 16th February, 2010 outside the 6 week limitation period provided by section 9(2) of the Unfair Dismissals Acts 1977 to 2007 in which to lodge an appeal to the Tribunal. The Form T1A is not the correct form for lodging an appeal and as is standard practice in the Tribunal the appellant was issued with the correct form for completion. The form was completed by the appellant and was received by the Tribunal on 23rd February, 2010. As these forms are not statutory forms the Tribunal would accept the date of 16th February 2010 as the material date rather than the date of 23rd February 2010.

On 24th February, 2010 the Tribunal secretariat wrote to the appellant advising him that in order to appeal the Rights Commissioner's Recommendation, a notification must be made to the Tribunal within six weeks of the date that the decision was communicated to him. Furthermore, the Tribunal advised the appellant that based on the information contained in his correspondence, it appeared that his appeal was outside this time limit and therefore appeared to be statute barred. The administrative staff in the Tribunal do not prevent a party from appearing before a Tribunal and it is a matter for the appellant as to whether to withdraw the appeal or not. As the claimant wished to pursue his appeal, the Tribunal secretariat listed the case for 27th September, 2011.

The matter came before the Tribunal on 27th September 2011 when the appellant informed the Tribunal that he had first submitted the appeal to the Rights Commissioner on or about 14th December 2009 within the six week timeframe. This was returned to the appellant by the Rights Commissioner. The appellant confirmed the information given by him to the Tribunal in his letter dated the 14th March, 2010.

The Tribunal informed the appellant that they did not have jurisdiction to hear the appeal as it was not received by the Tribunal within the six-week limitation period specified in the Act

The appellant was informed that a written determination in relation to the matter would issue in due course.

Determination:

Pursuant to section 9(2) of the Unfair Dismissals Acts 1977-2007 “an appeal under this section shall be initiated by a party by giving, within 6 weeks of the date on which the recommendation to which it relates was given to the parties concerned, a notice in writing (containing such particulars (if any) as may be specified in regulations under section 17 of this Act for the purposes of section 8 (8) thereof) to the Tribunal and stating the intention of the party concerned to appeal against the recommendation and a copy of the notice shall be given to the other party concerned within the said period of 6 weeks.”

The appeal was not submitted to the Tribunal within the six week period as specified in section 9(2) above. Accordingly, the Tribunal has no jurisdiction to hear the appeal.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)