

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

-Claimant

CASE NO.
UD1013/2010

against

EMPLOYER *-Respondent*

EMPLOYER *-Respondent*

EMPLOYER *-Respondent*

EMPLOYER *-Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. P. McGrath B.L.

Members: Mr. E. Handley
Mr. D. Thomas

heard this claim at Dublin on 6th October 2011

Representation:

Claimant: Mr. Cathal McGreal B.L. instructed by John Feaheny & Company, Solicitors,
Unit 7, Stewart Hall, Ryder's Row, Parnell Street, Dublin 1

Respondent Arthur Cox, Solicitors, Earlsfort Centre, Earlsfort Terrace, Dublin 2

The determination of the Tribunal on the preliminary issue was as follows:

The Tribunal has carefully considered the evidence adduced. The preliminary question before the Tribunal relates to the failure of the claimant to give the appropriate notice of an intention to challenge the termination of his employment (which had been effected by way of redundancy) within the six-month period allowed under the Acts.

The claimant has urged this Division of the Tribunal to accept that "exceptional circumstances" existed, such that prevented the said notice of an intention to bring a claim being made within the six month limit allowed, where the notice was brought within the twelve month period indicated under the Act.

The Tribunal has long and consistently held the view that "exceptional circumstances" have to be precisely that - "exceptional", meaning out of the ordinary or highly unusual.

What the Tribunal has been asked to do in this case is to consider the claimant's medical condition as having had such a bearing on the claimant's cognitive function such that he could in no way be expected to be able to make an informed decision on whether or not he would or could challenge his redundancy.

In support of its case the claimant offered an unchallenged medical report, the evidence of the claimant himself as well as the corroborating evidence of his sister-in-law.

Supporting the claimant's case is the prior EAT case of Paul McDonagh -v- Dell Computer Corporation (UD348/2002) which said case did recognise that the "prolonged illness" being experienced by the claimant constituted "exceptional circumstances" which allowed the Tribunal accept the late notice of the intention to bring a claim. The Tribunal notes that a medical doctor does appear to have given evidence in that case and the medical evidence was more comprehensive than the short medical report the claimant seeks to rely on in these proceedings.

That said, the claimant's doctor herein does state that, "his cognition was significantly affected by this depression and would have affected his ability to make a decision in relation to getting legal advice in relation to his redundancy."

However, as against this it does seem that the claimant was invited to try out for a new position, which came up in the company some two to three months after his redundancy. The claimant responded to this invitation and duly applied although sadly was not ultimately successful.

The Tribunal was concerned to note that the medical report also alluded to the taking of anti-depressants when, in fact, the claimant confirmed he did not take medication.

On balance, the Tribunal cannot find the evidence adduced by both the claimant and his doctor in any way prevented the claimant from bringing notice of his intention to challenge his selection for redundancy within the appropriate six-month period. In fact, the claimant only ever made the decision to challenge his selection for redundancy after his sister-in-law had told him to do so outside of the six-month period. The fact that the claimant continued to be deemed medically depressed at this point did not affect his decision to make a stand.

The claim therefore under the Unfair Dismissals Acts, 1977 to 2007, fails for want of jurisdiction.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)