

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

(appellant)

CASE NO.
UD737/2010

for implementation of 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: Mr J Flanagan BL
Members: Mr D Moore
Ms M Mulcahy

heard this claim at Dublin on 15th March 2011 and 27th July 2011

Representation:

Appellant:

In person

Respondent:

Mr Brian Whelan, director of the respondent

The determination of the Tribunal was as follows:

Determination

This case came before the Tribunal by way of an application for the implementation of the recommendation of the Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007 (r-076869-ud-09JOC).

The respondent confirmed that the registered name and the current registered address of the respondent company is as now appears upon this determination and has consented to this amendment.

The Tribunal notes that the recommendation of the Rights Commissioner was made against a named respondent who appears to be a limited liability company but the name of the respondent was given incorrectly in that the word "Limited" was omitted and that this matter alone raises an issue as to the proper service of the recommendation of the Rights Commissioner.

The Tribunal accepts the evidence given for the respondent that it had changed its principal place of business prior to the service of the recommendation of the Rights Commissioner. The Tribunal

notes that the respondent did not inform either the Rights Commissioner or the appellant of this change such that the recommendation was sent to the former address of the respondent after the respondent had vacated those premises. Furthermore, the appellant did not provide the Rights Commissioner with the registered address of the respondent company such that the recommendation was not served there by the Rights Commissioner.

It was the evidence of the respondent that it was only when the secretariat to the Employment Appeals Tribunal served the papers for this case (being an application for the implementation of the recommendation of the Rights Commissioner) that the respondent found enclosed the recommendation of the Rights Commissioner. The respondent claims that this was the first time that the respondent had been given the recommendation of the Rights Commissioner.

The Unfair Dismissals (Amendment) Act 1993 [No. 22/1993] provides at sub-subsection 8(4)(a) that:

Where a recommendation of a rights commissioner in relation to a claim for redress under this Act has not been carried out by the employer concerned in accordance with its terms, the time for bringing an appeal against the recommendation has expired and no such appeal has been brought, the employee concerned may bring the claim before the Tribunal and the Tribunal shall, notwithstanding subsection (5) of this section, without hearing the employer concerned or any evidence (other than in relation to the matters aforesaid), make a determination to the like effect as the recommendation.

Subsection 9 of the Unfair Dismissals Act 1977 provides that:

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 Tribunal accepted the claim of the respondent that the recommendation of the Rights Commissioner had not been given to it until it received notice of the application for implementation before the Tribunal and that this period was less than six weeks before the matter was first heard by this division. At that hearing the respondent indicated its intention to appeal the recommendation and the Tribunal postponed this case to allow time for the respondent to file its appeal.

An appeal was filed within the aforesaid period of six weeks and therefore the Tribunal refuses the application for the implementation of the recommendation of the Rights Commissioner and instead dealt with this matter by way of an appeal against the recommendation bearing case number UD619/2011.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)