

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE –**Claimant**

UD2238/2011

against

RP1832/2010

EMPLOYER - **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Revington SC

Members: Mr J. Reid
Mr N. Dowling

heard these claims at Dublin on 14 April, 3 October
and 7 December 2011

Representation:

Claimant:

In person on the first day, subsequently Mr Fran Rooney BL
instructed by Ms Una O'Brien, Sinnott & Company Solicitors,
Belgrave House, 15 Belgrave Road, Rathmines, Dublin 6

Respondent:

Mr Brian Conroy BL instructed by, on the first two days, Ms Valerie Neiland,
on the third day, Mr John McNamee both solicitors with the respondent

The determination of the Tribunal was as follows:

Determination:

Preliminary Issue

The claimant, who had been employed as an administrator from March 2006, lodged a claim with the Tribunal on 19 May 2010 seeking relief under the Redundancy Payments Acts, 1967 to 2007. This claim was lodged in circumstances where the claimant was seeking to secure a voluntary redundancy package from the respondent whilst pursuing an action for bullying in the workplace at the Equality Authority. The respondent would only agree to the voluntary package if the claimant withdrew the bullying claim. The claimant then resigned from her employment on 23 September 2010.

When the matter first came before the Tribunal on 14 April 2011 the hearing was adjourned to allow the claimant to seek legal advice. Subsequently on 27 September 2011 the Tribunal received a further claim in which relief was sought under both the Redundancy Payments Acts and the Unfair Dismissals Acts. No date of dismissal was included in this second claim.

On the second day of hearing on 3 October 2011 counsel on behalf of the claimant indicated that he wished to proceed with the claim under the Unfair Dismissals Acts on the basis that the Tribunal was entitled to embark on such hearing on foot of the claim lodged on 19 May 2010 where relief was sought under the Redundancy Payments Acts only. Counsel for the respondent argued that the Tribunal had no jurisdiction to commence on such a hearing and the Tribunal then sought submissions from the parties on the issue.

On the third day of hearing it emerged that the claim under the Unfair Dismissals Acts would be one of constructive dismissal. That being the case no period of notice would apply to the claim and therefore as the claim was received on 27 September 2011 more than 12 months after the resignation on 23 September 2011. Accordingly, even if exceptional circumstances had existed to prevent lodgement of the claim within the six months beginning on the date of dismissal thereby potentially extending to twelve months the period in which to lodge the claim, this claim was lodged outside the twelve months and therefore without having to consider the question of exceptional circumstance there is no jurisdiction to hear the claim under the Unfair Dismissals Acts, 1977 to 2007.

As the claimant was still in employment at the time the claim under the Redundancy Payments Acts, 1967 to 2007 was lodged and the claimant resigned some months later a claim under those Acts does not arise.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)