

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE *-claimant*

CASE NO.  
UD2643/2009

Against

EMPLOYER *-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr. G. Andrews  
Ms H. Henry

heard this claim at Ennis on 15 June 2011

#### **Representation:**

Claimant: Richard R O'Hanrahan, Solicitor, Limerick Law Chambers,  
22 High Street, Limerick

Respondent: Mr. Mike Cusack, Helix Hr, Deerpark, Clarecastle, Co Clare

#### **Preliminary Issue**

The respondent contended that the Tribunal did not have jurisdiction to hear the claim under the Unfair Dismissals Acts as it was lodged outside the prescribed statutory six-month time limit.

A preliminary application was made on behalf of the claimant to extend the time, pursuant to the provisions of section 8(2) (b) of the Unfair Dismissals Act, 1977 as amended, for the lodging of her claim..

#### **The Evidence**

The claimant's employment was terminated on 2 May 2009. The claimant was waiting for the decision of a Rights Commissioner on her complaint under the Payment of Wages Act, 1991 so that, if necessary, she could submit that appeal to the Tribunal along with her claim under the Unfair Dismissals Acts 1997 to 2007. She received the decision under the Payment of Wages Act on 23 November 2009. The Tribunal received her claim under the Unfair Dismissals Acts on 26 November 2009.

## Determination on Preliminary Issue

Section 8(2) of the Acts provides a time limit of 6 months for the bringing of a claim. This provision was amended by the Unfair Dismissals (Amendment) Act, 1993 by the insertion of the following:

- (b) if the rights commissioner or the Tribunal, as the case may be, is satisfied that exceptional circumstances prevented the giving of the notice within the period aforesaid, then, within such period not exceeding 12 months from the date aforesaid as the rights commissioner or the Tribunal, as the case may be, considers reasonable,

In *Byrne v PJ Quigley Ltd* [1995] ELR 205 the Tribunal in a majority decision considered the words “exceptional circumstances”

- (1) The words “exceptional circumstances” are strong words and should be contrasted with milder words such as “reasonably practicable”. ‘Exceptional’ means something out of the ordinary. At the least the circumstances must be unusual, probably quite unusual, but not necessarily highly unusual’

Having considered this analysis the Tribunal is of the view that, failing to lodge the claim under the Unfair Dismissals Acts within prescribed statutory six-month period beginning on the date of dismissal so that, if necessary, an appeal against a Rights Commissioner’s decision under another Act could be lodged along with it with the Tribunal, does not constitute ‘exceptional circumstances’ as required by s 8 (2) (b) of the Acts to allow for the extension of the time for lodging the claim. Accordingly, the claim is out of time and the Tribunal has no jurisdiction to hear the claim.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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