

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - *claimant*

CASE NO.
UD1153/2010
RP1577/2010

against

EMPLOYER - *respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this claim at Donegal on 21st November 2011

Representation:

Claimant: Sean Mac Aodha BL instructed by MM Mulrine & Co, Solicitors, Main Street,
Ballybofey, Co Donegal

Respondent: Mr Terry Mac Namara, IBEC, 3rd Floor, Pier 1, Quay Street, Donegal Town, Co
Donegal

The determination of the Tribunal was as follows:

At the beginning of the hearing the respondent's representative submitted that the Tribunal did not have jurisdiction to hear this case as the claimant's claim was out of time under the Unfair Dismissals Acts 1967 to 2007. The claimant's T1A was lodged in the Tribunal on the 21st April 2010 stating a termination date of 1st February 2010. However it was the respondent's position that the claimant's employment was terminated on the 31st December 2006 due to her frustration of her contract. The claimant's representative explained that the claimant would say that her employment did not end until 1st February 2010, the claimant had gone on sick leave in 2005 and this sick leave continued up to February 2010. At no stage during this period of sick leave did she receive any documentation from the respondent.

The Tribunal heard evidence from the claimant and a director of the respondent. The claimant's last day at work was the 17th January 2005. The claimant injured her neck in January 2005 and her doctor certified her unfit to work, while still out on sick leave she was involved in a car accident in February 2006. In 2008 she was in another car accident. The claimant maintained that she had sent sick certs in to the respondent for a period of 8 to 9 months when she first went sick in 2005, while the respondent maintained that they had received 4 sick certs in total. The claimant explained that she had ceased sending in sick notes to the respondent as her doctor had stopped providing her with same and she had continued to submit sick certs to Social Welfare throughout her absence.

During the claimant's period of sick leave she had no conversation with the respondent in respect of her employment. The claimant had seen the employer on a regular basis while in the shop or on the town street and say hello. The respondent agreed that they saw each other regularly over this period and he assumed that as she had stopped sending in sick certs, she had abandoned her employment. At no stage did the respondent ask the claimant formally or informally if she intended to return to work.

In January 2010 the claimant was fit to return to work. The claimant explained that she had called into the respondent on the 1st February 2010 to inform them of her intention to return to work. The director had said to her that she had a "cheek" coming in looking for her job back as he had placed his staff on a three-day week. The director denied he had said this to the claimant, he outlined that the claimant had said to him that she wanted her job back, he did ask her "what planet" she was on and explained that they had just closed a branch and all of his other employees were on a three day week.

After this the claimant contacted Revenue as she had not received a P45 from the respondent, Revenue did not have a copy of her P45 on file. She received her P45 from Revenue in August 2010. The respondent explained that they had continued to make the claimant's pension contributions up to the end of December 2005. On the 31st December 2006 the respondent's issued a P45 in respect of the claimant and furnished this to revenue but not to the claimant. He explained that Revenue was in touch with him in respect of the claimant's P45 and he produced a series of correspondence, and submitted a P43 to Revenue as requested.

During the course of the hearing the claimant's contract of employment was produced in evidence. The claimant accepted that she signed this on the 22nd June 2004. This contract states "A certificate from a qualified medical practitioner must be submitted on the third day of absence and on a weekly basis after that".

Determination

The Tribunal carefully considered the evidence adduced at the hearing in respect of the preliminary issue. They considered whether it was reasonable for the claimant to assume that her job was still open to her in February 2010. Whilst the respondent erred in not making contact with the claimant to establish if she had abandoned her job, the claimant frustrated her contract with the respondent by not submitting sick certs. The Tribunal determined the date of termination of employment was the 31st December 2006 therefore this claim was lodged outside of the time limit from the date of termination of employment as set out in the Unfair Dismissals Acts, 1977 to 2007. The Tribunal, therefore, rules that it does not have jurisdiction to hear this case.

The appeal under the Redundancy Payments Acts 1967 to 2007 was lodged outside of the limit as set out in those acts, accordingly the Tribunal determines that it does not have jurisdiction in this case.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)