

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

UD2044/2010

*claimant*

against

EMPLOYER

*respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr. J. O'Neill  
Mr J. Maher

heard this claim at Dublin on 5th March 2012

Representation:

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Claimant(s) : Mr. Anthony Byrne, BL instructed by Ms. Anne Marie James,  
Kirwan McKeown James, Solicitors, 22 Kildare Street, Dublin 2

Respondent(s): Ms. Elizabeth Ryan, Mason Hayes & Curran, Solicitors, South Bank House,  
Barrow Street, Dublin 4

The determination of the Tribunal was as follows:-

#### **Determination on Preliminary Issue**

The Tribunal has carefully considered the evidence adduced. The claimant is obliged to demonstrate that exceptional circumstances prevented her from giving notice of her intention to proceed with a claim for Unfair Dismissals within the six months period after the termination of her employment on or about the 21<sup>st</sup> of September 2009.

The Tribunal has every sympathy for the claimant who describes an increased range of problems which left her dealing with two rounds of major surgery, eight months of chemotherapy, parental ill health and eventual parental loss. This was all handled against a backdrop of what the claimant perceived to be bullying in the workplace which gave rise to elevated stress levels which had a negative effect on the claimant's normal day to day functioning and decision making processes.

The claimant's case was supported by a GP (Dr. H) with whom the claimant had consulted

a year in advance of her resignation. The doctor's evidence was of a general nature and certainly attested to the possibility of a cognitive 'shutdown' as a coping mechanism where dealing with her issues would only give rise to dangerous levels of stress. So, in effect the Dr. was saying that the claimant could not deal with her need to challenge her previous employer before the Tribunal as her need to preserve her sanity and well-being had to come first. In this regard, the point was made that the claimant did not know that there could be a delay of at least a year between issuing a T1A and having her case heard. She believed that if she had issued a T1A she would have to be ready for a hearing immediately.

The Tribunal in considering the facts before it has to have due deference to previous decisions made by the Tribunal in deciding what circumstances comprise "exceptional circumstances" such that prevent the appropriate notice being given. There can be no doubt that the Tribunal has traditionally required that quite unusual circumstances would have to be shown which led directly to the claimant being prevented from making her claim.

The Tribunal regrets that it can find no evidence of exceptional circumstances in the case presented to it by the claimant herself, her doctor and the more general submissions raised by Counsel. In this regard the Tribunal must look at the full six month period directly after the claimant's own resignation. There can be no doubt that the claimant was under huge pressure with her own health and in the task of looking after her parents. However, the claimant was holding down a new job and dealing with all the other day to day tasks of ordinary life. There was nothing preventing the claimant from talking to a solicitor and/or telephoning the Department of Jobs, Enterprise and Innovation to get the relevant information. The suggestion that this would take a full day out of her busy life has no reality. The imposition of time limits in the Unfair Dismissals Acts is to allow for employer and work place certainty. There has to be a cut-off point where an employer can assume that a termination of employment will have no further repercussions for the workplace.

Thus the receipt of a T1A nearly twelve months after the termination of employment must have come as a surprise to the respondent and gave rise to the need to demonstrate the exceptional circumstances provided for in the legislation.

The claimant's claim under the Unfair Dismissals legislation must therefore fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

