

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYER  
- *claimant*

CASE NO.

UD26/2011

against the recommendation of the Rights Commissioner in the case of:

EMPLOYEE  
- *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly B.L.  
Members: Mr D. Moore  
Mr G. Whyte

heard this appeal at Dublin on 8th May 2012

#### Representation:

Appellant(s) : Ms. Claire Hellen, IBEC, Confederation House, 84-86 Lower Baggot Street,  
Dublin 2

Respondent(s) : In Person

This case came before the Tribunal by way of the employer appealing against the recommendation of the Rights Commissioner – Reference R-089191-UD-10/JW.

#### Preliminary Issue

The representative for the employer submitted that the claim under the Unfair Dismissals Acts, 1977 to 2007 was out of time in that the dismissal date was the 30 June 2009 and the claim was not lodged with the Rights Commissioner until the 4 January 2010.

The employer argued that due to incorrectly directing her claim initially this caused a delay and she provided the Tribunal with evidence of the Rights Commissioner service receiving the claim on the 31 December 2009. She told the Tribunal exceptional circumstances including stress and anxiety brought on by the loss of her employment and family illness were the reasons

for not submitting the claim at an earlier stage.

### **Determination**

The claimant gave three reasons as to why she had not lodged her claim within the required six month period. She argued that those reasons brought her into the category of exceptional circumstances and on that basis the Tribunal had jurisdiction to hear her claim.

Firstly, she stated that she was not aware and was not advised what exactly six months meant. It was open to the claimant to get legal advice on the matter and for her own personal reasons chose not to. Ignorance of the law is not a valid excuse and is not sufficient to establish exceptional circumstances.

Secondly, the claimant stated that her husband was undergoing medical tests at that time and was as a result of those tests placed on a very restrictive diet. Both she and her family found this a very unsettling and worrying time. The Tribunal accept that any illness within a family unit is a very stressful and worrying time however the claimant was not herself ill and her husband's circumstances were not such as to prevent her lodging her claim within the six months.

Thirdly, the claimant stated that she herself was under significant stress due to the termination of her employment. No medical evidence was adduced to show that her stress was such as to prevent her from lodging her claim. It is also well established in law that stress is not a factor that can be taken into consideration when determining jurisdiction in these circumstances.

The Tribunal finds that it does not have jurisdiction to hear the claim having found that exceptional circumstances did not exist. The appeal by the employer succeeds thus upsetting the Rights Commissioner's recommendation reference - R-089191-UD-10/JW.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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