

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE
- *claimant*

CASE NO.
UD519/2011
MN556/2011
WT201/2011

Against

EMPLOYER
- *respondent 1*

EMPLOYER
- *respondent 2*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.
Members: Mr J. Goulding
Mr M. O'Reilly

heard this claim at Dublin on 13th July 2012

Representation:

Claimant(s) : Mr Fergus O'Regan, O'Regan Little Solicitors, 7 Winetavern Street, Dublin 8

Respondent(s) : Ms. Sheila Treacy, IBEC, Confederation House,
84-86 Lower Baggot Street, Dublin 2

At the commencement of the hearing the case against the first named respondent was formally withdrawn on behalf of the claimant by his representative.

Preliminary Determination

The Tribunal notes that the claim against the first named respondent was formally withdrawn.

The claimant comes before the Tribunal on foot of a claim for unfair dismissal arising out of his dismissal for serious misconduct which occurred on the 30 July 2010.

At this time the Tribunal has been asked to consider by way of preliminary issue whether the Tribunal can or should extend the period for the service of the T1A from six months to twelve months where the Tribunal has been satisfied that exceptional circumstances prevented the giving of notice within six months of the relevant dismissal.

The respondent states that the date of the 30 July 2010 is the relevant dismissal date as evidenced by the P45, notice of dismissal and the intention of the parties at that time.

In essence the claimant is arguing that the Tribunal should consider the relevant dismissal date to be the 14 January 2011 being the date that the outcome of the appeal process was made known to the claimant.

The Tribunal has had to consider a number of documents in reaching a decision. In particular the employer's handbook has been studied and it states that where a person is dismissed for serious misconduct that there is no internal right of appeal and the only option open to an employee is to appeal the decision to the Employment Appeals Tribunal or Rights Commissioner. In that instance the employee must notify the Director of an intention to appeal within two days of the notification of any disciplinary action being taken. It is worth noting that the handbook specifically describes the appellant as an "employee" in this context. The Tribunal has noted that there is a provision in the same handbook for a workplace appeal in the disciplinary process (excluding instances of gross misconduct).

The claimant lodged a notice of appeal some two months after the date of his dismissal. By letter dated the 13 October 2010 the director of the respondent body agreed to allow the decision to dismiss be appealed.

It seems therefore that both parties deviated from the process envisaged in the handbook. The application for appeal was well outside the two day limit referred to in the handbook and the fact of allowing an appeal other than to the Employment Appeals Tribunal or Rights Commissioner was not the standard practice (in cases of gross misconduct).

The Tribunal therefore finds that the parties entered into an out of the norm appeals process. Arising out of this fact can the claimant make the case that his termination is somehow suspended until it is either reversed or confirmed on appeal? Put another way did the claimant believe the appeals process stopped time running for the purposes of the Unfair Dismissals Acts?

The respondent has invited the Tribunal to look at the letter from the claimant dated the 4 January 2011 as evidence of the fact that the claimant knew the law in relation to time limits. However, the Tribunal finds another interpretation of that same letter could also be a genuine belief that the time limit of six months would run from the receipt of the final appeal decision.

On balance, the Tribunal finds that this was not an unreasonable belief held by the claimant and in holding this belief the Tribunal accepts that whilst the relevant dismissal date was the 30 July 2010 the Tribunal will extend the date by a further six months as exceptional circumstances existed by reason of a unique appeals process being entered into. Had the handbook been followed, the claimant would presumably have lodged the T1A in the normal way.

The claim under the Unfair Dismissals Act can proceed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)