

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE (*appellant*)

CASE NO.  
UD1948/2010

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

EMPLOYER (*respondent*)

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. V. Gates B.L.

Members: Mr. D. Peakin  
Mr. S. O'Donnell

heard this appeal at Dublin on 22<sup>nd</sup> February 2012

Representation:

\_\_\_\_\_

Appellant(s) : In Person

Respondent(s) : Philip Lee, Solicitors, 7 - 8 Wilton Terrace, Dublin 2

The determination of the Tribunal is as follows:

The Parties came before the Tribunal on an employee appeal from a decision of the Rights Commissioners dated 13<sup>th</sup> July, 2010 (r-083346-ud-09/DI).

#### **Preliminary Issue**

The claimant was due to return to work from a career break in December, 2008 but resigned his position with the respondent on 29<sup>th</sup> August 2008. He subsequently withdrew his resignation in October 2008 and the respondent rejected the withdrawal on 15<sup>th</sup> January 2009. His complaint was presented to the Rights Commissioner on 28<sup>th</sup> August, 2009.

Giving reasons as to the delay in lodging his claim, the claimant stated in evidence that he spoke to a union solicitor over the phone but was not informed of the 6 month time limit. The solicitor could not assist him as he had left the union. The claimant said he was not capable of making a rational decision at the time as he was under a lot of stress. He referred to medical letters during the period 22<sup>nd</sup> October 2008 to 16<sup>th</sup> September 2010. He said that the Rights Commissioner based his decision on the fact that he had received legal advice.

Under cross-examination, the claimant confirmed he was on a career break and was due to return in December, 2008 but he resigned on 29<sup>th</sup> August, 2008. He said his psychologist said he was suffering from depression. The claimant decided to take the case on 15<sup>th</sup> January 2009. He rang the Employment Appeals Tribunal in and around February/March. He did not know his options and could not afford a solicitor. It was actually October/November 2008 when he contacted the union solicitor. He said he found the union solicitor unhelpful and she said he did not have much of a chance. The claimant said he was told by the Employment Appeals Tribunal that he had 12 months in which to bring a case. The respondent's representative said that this was highly unlikely to have happened with regard to information from the Employment Appeals Tribunal.

In reply to the Tribunal, the claimant confirmed that he had resigned his position as he was not thinking clearly.

### **Determination**

The Tribunal affirms the decision of the Rights Commissioner that the claimant presented his complaint outside the 6 month time limit set out in Section (2) of the Unfair Dismissals Act, 1977.

The Tribunal finds as a fact that the date of termination was 29<sup>th</sup> August 2008 and accordingly the claimant had 6 months from that date to lodge a complaint before the Rights Commissioner, which he failed to do. Further, even if employment terminated on 15<sup>th</sup> January 2009, when the respondent communicated its decision not to accept the claimant's withdrawal of his resignation, the claimant failed to lodge a complaint within the necessary 6 months required by the Act, not lodging the papers with the Rights Commissioner until 28<sup>th</sup> August, 2009.

The Tribunal is not satisfied that there were exceptional circumstances that would warrant an extension of the 6 month statutory time limit in relation to either date, 29<sup>th</sup> August 2008 or 15<sup>th</sup> January 2009.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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