

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *claimant*

UD329/2011  
RP386/2011  
MN318/2011  
WT98/2011

against

EMPLOYER - *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007  
REDUNDANCY PAYMENTS ACTS, 1967 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: Mr. M. Gilvarry

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

heard this claim in Letterkenny on 9<sup>th</sup> February 2012

Representation:

Claimant: In Person

Respondent: Purdy Fitzgerald, Solicitors, Kiltartan House, Forster Street, Galway

**Determination**

The application came before the Tribunal on a preliminary point as to whether the claim had been made within the time limit as set out in the Unfair Dismissals Acts. The date of dismissal as claimed by the claimant was the 12<sup>th</sup> February 2010 but the claim on the face of it was date

stamped as received by the Tribunal more than six months later. On examining the Tribunal file it was discovered that the claim form had been received on the 12<sup>th</sup> July 2010 within the six month time limit but had been returned to the claimant to complete whether the rights commissioners were being objected to or not. The Tribunal determines that this constituted the giving of notice in writing to the Tribunal within the period of six months beginning on the date of the relevant dismissal and therefore the claimant's claim is made within time.

However the respondent also contended that the claimant's claim was not allowable as he did not have 12 months service, and none of the exceptions in the Unfair Dismissals Acts 1977 to 2007 applied. This was because of the liquidation of the original employer "Dispense and Vending Services" on the 27<sup>th</sup> October 2009 with the claimant's employment ending on that date or alternatively on the signing of the RP50 from the liquidator of Dispense and Vending Services, dated 1<sup>st</sup> December 2009. The respondent also argued that the Transfer of Undertaking Regulations 2003 did not apply as Dispense and Vending the original employer was insolvent. The Tribunal heard that the claimant counter signed the RP50 at the time even though he disputed the copy produced to the Tribunal was a true copy. The Tribunal noted that the claimant accepted the redundancy lump sum after careful consideration and after taking legal advice.

In the circumstances the Tribunal accepts that the claimant was dismissed on the 1<sup>st</sup> December 2009 and therefore did not have sufficient service with the named respondent to make a claim under the Unfair Dismissals Acts 1977 to 2007 or the Redundancy Payments Acts 1967 to 2007. Therefore these claims are dismissed.

The claimant accepted that he received two weeks minimum notice, therefore the claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 is dismissed. There was no evidence adduced at the hearing under the Organisation of Working Time Act 1997, this claim is also dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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