

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE - **Appellant/Employee**

UD885/2012

against the recommendation of the Rights Commissioner **R-105471-UD-11**
in the case of:

EMPLOYER - **Respondent/Employer**

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms E. Daly BL

Members: Mr D. Morrison
Ms A. Moore

heard this appeal at Letterkenny on 4 February 2013

Representation:

Appellant:
In person

Respondent:
Mr Pdraig O'Grady, IBEC, 3rd Floor, Pier 1,
Quay Street, Donegal Town

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an employee appealing against the Recommendation of the Rights Commissioner reference **R-105471-UD-11**

For clarification purposes the appellant shall be referred to as the employee and the respondent as the employer

Determination:

The employer raised a preliminary issue as to whether the appeal was properly before the Tribunal. The Rights Commissioner's recommendation was signed on 11 January 2012 and the employee's appeal of that recommendation was received by the Tribunal on 1 June 2012.

Section 9 (2) of the Unfair Dismissals Acts, 1977 to 2007 provides

“An appeal under this section shall be initiated by a party by giving, within 6 weeks of the date on which the recommendation to which it relates was given to the parties, a notice in writing..... to the Tribunal.....”

When the employee lodged his application to the Rights Commissioner service in January 2011 he used a different address from that which he used when submitting this appeal to the Tribunal. The Rights Commissioner heard the employee's claim on 17 October 2011. The employee's position was that at that hearing he had asked the Rights Commissioner to send her recommendation in the case to his legal adviser who did not attend at either that hearing or the within appeal before the Tribunal. The manager of the employer's store where the employee worked could not recall the date on which the recommendation was received but the employer did appeal the recommendation, withdrawn a few days before this hearing, and this appeal was received by the Tribunal on 23 January 2012.

The employee moved to his current address sometime in early 2012. There was no evidence adduced to the Tribunal that the employee had informed the Rights Commissioner service of his change of address in early 2012. It follows that the Tribunal is not satisfied that the employee notified the Rights Commissioner service of his change of address at the time it occurred.

The Tribunal is satisfied that the recommendation issued from the Rights Commissioner Service on or around 12 January 2012 to the employee at the address he used when submitting his claim and that, for the purposes of the Unfair Dismissals Acts, the recommendation was given to the parties by 16 January 2012. 1 June 2012, the date the appeal was lodged with the Tribunal, was more than 6 weeks after the recommendation was given to the parties. Accordingly, the Tribunal finds that there is no jurisdiction to hear the appeal under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)