

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE – *claimant*

CASE NO.  
UD1613/2011

Against

EMPLOYER – Respondent

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr D Mac Carthy SC

Members: Mr C Lucey  
Ms M Mulcahy

heard this claim at Dublin on 7th January 2013

Representation:

Claimant(s): Ms Mary Duffy-King  
SIPTU  
Misc Unit, Liberty Hall, Dublin 1

Respondent(s): Mr Ken Stafford  
Management Consultancy Services  
7 Castletown Court, Celbridge, Co Kildare

The determination of the Tribunal was as follows:-

#### **Preliminary Issue:**

The respondent's representative put forward two preliminary matters in regard to the claimant's claim under the Unfair Dismissals Acts 1977 to 2007.

The claimant's employment terminated on 21 January 2011. He submitted his application to the Tribunal on 5 August 2011 which was beyond the six month time limit. The respondent's representative explained that the claimant made a claim under the Act to the Rights Commissioner Service within the six-month time period, but the employer had objected to the Rights Commissioner hearing the case.

The claimant was given notice of termination by way of redundancy on 7 January 2011. He opted to work his two week notice period. However, on 13 January 2011 he chose to take his final week's pay in lieu. The claimant accepted a statutory redundancy payment and ex-gratia

payment on 13 January 2011. He signed a disclaimer form on the same day. Parts 4 and 5 of the disclaimer stated that:

*4. I accept the payment in (3) above in full and final settlement of all claims of every nature, type and kind whatsoever and howsoever arising from both my former employment and the cessation thereof with The Company, whether such claims arise under contract, statute [including, but not limited to, Redundancy Payments Acts 1967 to 2007, Unfair Dismissals Acts 1977 to 2007, Minimum Notice And Terms Of Employment Acts, 1973 To 2005, Industrial Relations Acts 1946 to 2004, Organisation Of Working Time Act, 1997, Payment of Wages Act 1991, Safety, Health and Welfare at Work Acts 1989, Terms of Employment (Information) Acts 1994 and 2001, Employment Equality Acts 1998 to 2007, Protection of Employees (Part-time Work) Act 2001, Protection of Employment (Fixed-Term Work) Act 2003 or other relevant legislation] or at common law or otherwise.*

*5. I confirm that this document has been read over and explained to me prior to my signing same, that I have obtained independent legal or other advice prior to my signing same and that accordingly, I both understand and accept the contents thereof in full.*

The claimant agreed that he had read the disclaimer, including clause 4, prior to signing. He had requested to work his notice in the hope that his employer would keep him on, but after a week he realised it did not matter what he did. He did not recall who requested the meeting on 13 January 2011. It was put to him that he could sign the disclaimer or leave with nothing. He felt he had no option but to sign. He was not advised that he could seek legal advice. He thought he could appeal afterwards. The claimant worked as a sales advisor in a builders' merchant.

#### **Determination:**

The Tribunal finds that the claim was lodged in time as the claimant lodged his claim with the Rights Commissioners' Service within six months of his dismissal.

The claimant received his notice on 7 January 2011. He decided to work his two weeks' notice to dissuade the company from making him redundant. After one week he decided it was pointless and would go. He met a manager from whom he received a statutory redundancy payment and an ex-gratia sum. He also signed a disclaimer which included points 4 & 5 as outlined above.

The Tribunal finds that the claimant had settled any claims under the Unfair Dismissals Acts 1977 to 2007, and accordingly the claim fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

