

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

RP2890/2011

- *claimant*

CASE NO.

UD2301/2011

MN2336/2011

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr C. Lucey
Mr F. Keogh

heard this claim at Dublin on 25th April 2013

Representation:

Claimant(s) :

Respondent(s) :

The determination of the Tribunal was as follows:-

Preliminary Determination

By consent the Tribunal gave consideration to the issue as to whether it had jurisdiction to hear the claim it being common case that the lodgement of the claim had taken place outside the statutory period provided of six months from the alleged date of the claimant's dismissal.

It is agreed by the parties

- a) That the internal appeal of the claimant was concluded after the expiration of a period of five months from the alleged dismissal and this appeal included the raising of an issue by the claimant which had not featured in the original procedural process which resulted in his dismissal and
- b) That there is no contractual condition providing for the suspension of the commencement of the statutory period of six months within which a claim must be

made until the expiration of the appeal process and that there is no company practice providing for such an entitlement.

The claimant submitted

- a) that the raising of this issue in his internal appeal suspended the commencement of the statutory period until the expiration of the appeal process
- b) in the alternative that there were present exceptional circumstances enabling him to successfully apply for an extension of the statutory period these consisting of
 - 1. the absence of legal representation to him
 - 2. the experiencing of language difficulties by him
 - 3. the failure of the respondent to conclude the internal appeal process for a period of five months from its inception

It is firstly found and determined that the omission of the claimant in failing to raise the issue referred to in the original procedural process which resulted in his dismissal is not the responsibility of the respondent, in the absence of any such evidence being submitted by the claimant and since it is not that it would therefore be unfair and unreasonable for the claimant to obtain any benefit from his omission. It is therefore determined that the dismissal of the claimant was not suspended until after the completion of the internal appeal process.

It is secondly found and determined that neither the failure of the claimant to seek legal representation or his alleged language difficulties are sufficient reasons for the Tribunal to find that exceptional circumstances are present.

The Tribunal finally finds and determines, in the absence of any justifiable evidence being furnished by the respondent to address the time period of five months that it took to complete the appeals process, that a delay of this magnitude unfairly and unreasonably impacted upon the claimant in respect of the time period within which his claim is required to be brought and that in these circumstances it would be a proportionate response for the Tribunal to exercise its discretion and to extend the statutory time period of six months by a further six months within which the claim may be brought. It is therefore determined that the Tribunal has jurisdiction to hear the claim.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)