

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - *appellant*

CASE NO.
UD1622/2011

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 C. Egan B L

Members: Mr. W. O'Carroll
Ms H. Henry

heard this appeal at Galway on 2nd May 2013

Representation:

Appellant(s) :

Respondent(s) : No appearance by or on behalf of respondent

This case came before the Tribunal by way of an appeal by the employee (appellant) against the recommendation of the Rights Commissioner (r-105808-ud-11) under the Unfair Dismissals Act 1997 to 2007.

Determination

The Tribunal is satisfied that both parties were properly on notice of the hearing. The appellant worked for the respondent company from 26 October 1999 until 7 May 2010 when he was dismissed from his employment by reason of redundancy. The Tribunal heard the appellant's uncontested evidence that the company operated a last in first out policy in terms of implementing redundancies. A former manager in the company known as (M) confirmed that this was the company policy. The appellant accepted that he was being made redundant in May 2010 but noted that two employees with less service than he were retained in employment. He raised this issue with the Managing Director of the company and was told that the two employees concerned were working out their notice period. He accepted this explanation at the time, but later, in January 2011 discovered that the two employees were still in employment with the respondent. At that stage he lodged his claim for unfair dismissal. He accepted that this was outside of the six months time limit permitted in the legislation

but submitted that the aforementioned circumstances amounted to exceptional circumstances within the meaning of section 7 (2) (b) of the Unfair Dismissals Act. He submitted that the time limit for lodging his claim should be extended pursuant to section 7 (2) (b) of the Act.

The Tribunal accepts that the aforementioned circumstances amount to exceptional circumstances and pursuant to section 7 (2) (b) extends the time period allowed to a period not exceeding 12 months from the date of dismissal, thus making the claim a legitimate claim.

Based on the uncontested evidence of the appellant, the Tribunal find that he was unfairly selected for redundancy and therefore unfairly dismissed from his employment within the meaning of the Unfair Dismissals Acts. The Tribunal heard further evidence in relation to the appellant's efforts to mitigate his loss and secure alternative employment since the termination of his employment with the respondent company.

Taking all the circumstances into consideration the Tribunal upsets the recommendation of the Rights Commissioner, and also being cognisant of the fact that the appellant has already received a lump sum payment, awards the appellant the sum of €36,752.00 under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

