

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE,
- appellant

UD2067/2011

EMPLOYER *- respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary BL

Members: Mr. M. Carr
Ms. A. Moore

heard this appeal at Monaghan on 26th March 2013

Representation:

Appellant:

Respondent:

This case came before the Tribunal where the employee is appealing the recommendation of the Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007 reference r-100972-ud-10/SR.

Determination:

This matter came before the Tribunal at Monaghan Courthouse on Tuesday 26th March 2013. The matter was an appeal against a recommendation of a Rights Commissioner. From the files of the Tribunal we noted that an application had been made in the same matter to the Tribunal with a completed T1A form seeking the same relief. On this form an objection to the Rights Commissioner hearing the matter was made by or on behalf of the claimant.

Under Section 8 of the Unfair Dismissals Act 1977 SS (3) and (5) as amended by the 1993 Act Section 7 (b) states:

(5) "The Tribunal shall not hear a claim for redress under this Act unless before the commencement of the claim, one of the parties concerned notifies in writing –

- (i) In a case where the claim had been initiated before a Rights Commissioner, the Rights Commissioner, or
- (ii) In any other case, the Tribunal,

That he objects to the claim being heard by a Rights Commissioner.”

From the above it is clear to the Tribunal that when the application was made on the T1A form to the Tribunal in this case a similar application was made to the Rights Commissioner in the same matter. The T1A form contained the objection to the Rights Commissioner hearing the case in accordance with the provisions of Section 8 of the Act. When that objection was made the Rights Commissioner had no authority to proceed with the hearing of the matter. The onus of informing the Rights Commissioner of this fact was on the claimant or her representative to advise the Rights Commissioner of this fact. Quite obviously this was not done and on 29th November 2011 a date subsequent, to the Rights Commissioners hearing, an application was made to the Tribunal to strike out the application to the Tribunal stating “there was a mistake in the claimant’s representative’s office, that there was a claim under the Unfair Dismissals Acts 1977 to 2007 before the Rights Commissioner and dealt with by the Rights Commissioner” and withdrew the claim and apologised.

This was the third matter that had been dealt with by the office of the representative of the claimant in the same fashion that came before the Tribunal on the day of the hearing of the so called appeal. This does not appear to the sitting Division of the Tribunal to be a matter that could be called a mistake and must be deliberate. The Tribunal has a long list of cases awaiting hearing and the number and frequency of these cases which have been dealt with in this fashion referred to as a mistake are elongating this list and causing considerable difficulty to the Tribunal.

As a matter of law once an objection to a Rights Commissioners hearing has been made and a case has been put into the Tribunal a party is estopped from having that matter being heard by a Rights Commissioner thus removing the authority of the Rights Commissioner to hear the matter. Therefore an appeal from a Rights Commissioner decision in such a case is invalid and the Tribunal have no jurisdiction to hear such appeal.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)