

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

-claimant

CASE NO.
UD1187/2011

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. K. T. O'Mahony B.L.

Members: Mr T. Gill
Ms H. Henry

heard this appeal at Ennis on 23rd January 2013

Representation:

Appellant:

Respondent: In Person

This case came before the Tribunal by way of an employee appeal of the Rights Commissioner Recommendation **ref: r-076004-ud-09/pob**. The Rights Commissioner found that the claim for redress under the Unfair Dismissals Acts 1977 to 2007 was submitted outside the prescribed 6 month time limit.

Summary of Evidence

The claimant commenced employment with the respondent, on 03 July 1999, working on maintenance and landscaping. The claimant lived in accommodation provided by the respondent. The claimant had issues about his pay and outstanding wages owing to him. The claimant was absent on sick leave and it was alleged that this was due to the stress caused by the respondent's failure to address the issues he had raised.

The claimant sought advice from Citizens Information Centre in May 2008 and on 10 June 2008 consulted a solicitor. The claimant's representative wrote to the respondent on 30 July 2008 stating that, '*our client has no alternative but to tender his resignation and to cease working for you*' The respondent in reply indicated that he did not accept the claimant's resignation and advised the Department of Social and Family Affairs in early August 2008 that

the claimant's employment had not ended. The claimant moved out of the accommodation on 27 August 2008 which was the agreed termination date as it was the day he moved out.

The claimant was aware that the claim had to be lodged within a 6-month time period as advised by the Citizens Information Centre. The claimant's first legal representative referred him to another legal representative who also raised the time-limit issue for submitting a claim with him.

The claimant submitted a claim to the Rights Commissioner Service on 27 February 2009 with the assistance of the Legal Aid Board.

Determination

The Tribunal is satisfied that the claimant resigned by letter of 30 July 2008. The respondent does not have to accept a resignation for it to be effective. The claimant lodged his claim under the Unfair Dismissals Acts on 27 February 2009, which is outside the prescribed statutory time-limit for lodging a claim. Within the six-month period immediately following his dismissal the claimant received advice from the Citizens Information Centre and a number of solicitors. It is clear from some of the latter's correspondence produced in evidence that the time limit for lodging a claim was discussed with the claimant. Furthermore, the claimant in his evidence accepted that he was aware of the time limit.

Even if the later termination date of 27 August 2008 was taken as the dismissal date, the claim would still be out of time as it was lodged on 27 February 2009, which is one day outside the statutory time-limit, which expired on 26 February 2009.

The Tribunal is further satisfied that no exceptional circumstances existed during the initial six-month period which can, under section 8 (2) (b) of the 1977 Act as amended, allow for the lodging of the claim within a further period.

Accordingly, the Tribunal has no jurisdiction under the Unfair Dismissals Acts, 1977 to 2007 to hear the claim

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)