

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE (*appellant*)

CASE NO.
UD48/2012

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: Mr T. Taaffe

Members: Mr F. Cunneen
 Mr G. Whyte

heard this appeal at Trim on 14th January 2013 and 26th June 2013

Representation:

Appellant(s) :

Respondent(s) :

The determination of the Tribunal was as follows:

This case came before the Tribunal by way of an employee appeal of a Rights Commissioner recommendation under the Unfair Dismissals Acts, 1997 to 2007, reference r-096503-ud-10.

It was decided at the outset, that the Tribunal would determine the preliminary issue in relation to the waiver document signed by the appellant.

Summary of Respondent's case

The HR Manager told the Tribunal that the 2009 redundancy programme was rolled out in consultation with the appellant's union. Staff were engaged and informed at all stages of the process. A co-operation payment was included in the redundancy package. The appellant was asked to sign a waiver document on 28th May, 2010 in full and final settlement of payment arising from his redundancy. The appellant was given the opportunity to read the waiver before he signed it. The purpose of the meeting was to conclude all final paperwork in relation to the redundancy.

Summary of Appellant's case

The appellant stated that he did not consult in private with a representative and therefore the

waiver was not valid. He also stated that when he asked at the final meeting as to “what would happen if he did not sign the waiver” he was met with silence. The appellant indicated to the Tribunal that he felt he had to sign the waiver and felt under pressure.

Determination

The Tribunal carefully considered the evidence adduced, both verbal and written and the submissions made.

It is confirmed that the Tribunal agreed, with the consent of the parties, to treat the appeal as a “de novo” hearing on the understanding that the Rights Commissioner had conducted a full hearing of the case, including a preliminary issue concerning whether he had jurisdiction to hear the claim in view of it being submitted by the respondent, that the appellant had accepted a settlement of his claim as a result of executing a form of waiver and receipt furnished by the respondent.

It was agreed that the Tribunal would address the appeal by firstly giving consideration to this issue and if appropriate, then proceeding to consider the substantive content of the appellant’s claim.

The appellant asserted that he was placed under duress in respect of his execution of the waiver and receipt referred to.

It was common case that a protracted engagement between the parties and fellow employees of the appellant took place involving the issue of compulsory redundancy. What is also not in dispute is that this culminated in a financial agreement being concluded with the knowledge of the appellant, with the respondent, by the appellant’s representative. This agreement consisted of the payment of monies in respect of his redundancy, together with payment of additional monies, the total of which was reflected in the form of waiver and receipt referred to and which was executed by the appellant at a final meeting. Neither is it disputed that an RP50 and other relevant finalising documents were furnished to the appellant considerably in advance of the date of the final meeting and that no issues were raised by the appellant prior to the meeting.

It is found and determined:

1. That the appellant retained representatives to negotiate on his behalf and that they at all times did so with his consent and agreement.
2. That the full details of the agreement referred to were communicated to the appellant prior to the final meeting as was the purpose of the meeting.
3. That the purpose of the meeting was the formalisation of the conclusion of the appellant’s employment and was so understood by the parties.

The Tribunal considered the circumstances surrounding the execution of the waiver and receipt (hereinafter called “the document”) and finds and determines:

1. That the document was a part of a number of documents that were presented at the meeting for the purpose of concluding the appellant’s employment.
2. That the furnishing of the document, together with a request to execute it was accompanied by the appellant being given the opportunity which he availed of to consider it.
3. It is therefore found and determined that the appellant freely and voluntarily executed

the document. It is therefore finally determined that the Tribunal does not have jurisdiction to hear the claim, that the appeal is dismissed and that the recommendation of the Rights Commissioner is upheld and confirmed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)