

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee

UD287/2007

against the recommendation of the Rights Commissioner in the case of:

Employee-v-
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr R. Murphy
Mr F. Barry

heard this appeal at Portlaoise on 4th February 2008
and 29th July 2008

Representation:

Appellant :

In person

Respondent :

XXXX on the first day of hearing

Mr Conor Power, B.L., instructed by McCann Fitzgerald Solicitors, Riverside One,
Sir John Rogerson's Quay, Dublin 2 on the second day of hearing

This case came before the Tribunal by way of an appeal by the employee against the
recommendation of a Rights Commissioner Ref: r-045180-ud-06/JH dated 30th January 2007

The determination of the Tribunal was as follows:-

On the second day of this hearing counsel for the respondent raised the question of the Tribunal's
jurisdiction to hear the case as the appeal was received by the Tribunal outside the statutory
six week time limit for lodging such appeal. The Rights Commissioners Recommendation was

dated 30th January 2007 and through the An Post track and trace system the respondent established that this recommendation was delivered to the appellant on 31st January 2007. The Tribunal received the appellant's form T1B on 15th March 2007. Counsel for the respondent stated that the time expired on 13th March 2007 therefore the Tribunal does not have jurisdiction to hear this case.

Determination:

Reference was made to time limits by the appellant in form T1B and by the respondent when filing their notice of appearance. If this issue was raised on the first day it would have been noted and the Tribunal would not have proceeded without addressing it. Counsel for the respondent stated that it was raised but the issue was not pursued but the record of the Tribunal hearing does not support this. Counsel also stated that as it was raised in the papers by the respondent the Tribunal should have addressed the matter. The Tribunal could take the view that if it was raised and not addressed this point was waived but they were not legally represented. The Tribunal gives non-legally represented parties assistance. The appellant was not represented at either hearing and the Tribunal has endeavoured to assist him. Counsel for the respondent stated that the appeal appears to be two days out of time. While there is a provision in the Unfair Dismissals (Amendment) Act 1993, if a claim is being lodged directly with the Tribunal it may extend by a further six months if exceptional circumstances existed, no such discretion exists in an appeal. We regret that the Tribunal must find that the appeal is out of time and the Tribunal does not have jurisdiction to hear the appeal.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

