

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE     *-claimant*

CASE NO.  
UD425/2010

Against

EMPLOYER     *-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman:     Mr. J. Fahy

Members:     Mr. G. Andrews  
                  Mr. F. Dorgan

heard this claim at Ennis on 1st September 2011

#### **Representation:**

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Claimant:     Mr. Lorcan Connelly B.L. instructed by Cahir & Co, Solicitors, 36 Abbey Street,  
                  Ennis, Co Clare

Respondent:   Ms Sandra Masterson-Power, Byrne Wallace, Solicitors, 2 Grand Canal Square,  
                  Dublin 2

#### **Preliminary Issue**

##### **Respondent's Position**

The respondent made the application that the Tribunal does not have jurisdiction to hear this claim, as it was lodged with the Tribunal outside the 6-month time limit as prescribed in Section 8 (2) of the Unfair Dismissals Act 1977.

The claimant's employment terminated on the 5<sup>th</sup> of June 2009. The Tribunal received the claimant's T1A on the 28<sup>th</sup> of January 2010; it was dated the 24<sup>th</sup> of June 2009. Accompanying the T1A was a statement of events dated the 24<sup>th</sup> of June 2009. This statement includes the assertion that, '*I am now taking this case to a Tribunal as advised by (name), Citizens Advice Bureau.*' The respondent contends that as of the 24<sup>th</sup> of June 2009 the claimant was in receipt of professional advice and had completed the form T1A.

The respondent further contends that any circumstances that may be put forward to allow the time limit to be extended have to be exceptional. A clerical error cannot be defined as 'exceptional.' The respondent detailed the applicable case law on exceptional circumstances.

## **Claimant's Position**

The claimant made the application for the time limit to be extended to allow the claim under the Unfair Dismissals Acts, 1977 to 2007 to proceed.

The claimant attended the Citizens Advice Bureau in June 2009. On the 24<sup>th</sup> of June 2009 he completed and signed the T1A and compiled a statement of events leading to the termination of his employment. These documents were left with the Citizens Advice Bureau's representative (PW) to send to the Tribunal. The documents did not reach the Tribunal until the 28<sup>th</sup> of January 2010.

The representative from the Citizens Advice Bureau (PW) gave sworn evidence that he posted the documents in or around the 24<sup>th</sup> of June 2009. The documents were not sent by registered post, a certificate of posting was not retained, a cover letter was not sent and no other record was kept. On foot of a request PW sent a letter to Social Welfare dated the 3<sup>rd</sup> of September 2009 stating that, '*We have submitted application to the Employment Appeal Tribunal on behalf of the above named client for Constructive Dismissal under the Unfair Dismissal Act 1997 to 2001.*' The claimant contacted PW querying the waiting period for a hearing which prompted the representative to contact the Tribunal. As a result of contacting the Tribunal PW was made aware that the claimant's application had not been received. PW then submitted the T1A and particulars received by the Tribunal on the 28<sup>th</sup> of January 2010.

The claimant maintains that in the circumstances there are three possibilities;

- T1A was sent
- T1A was sent and lost by the Tribunal
- T1A was sent and misplaced by the Tribunal

The claimant believes all of the above fit the definition of exceptional circumstances to allow the extension of the time limit. The claimant detailed the case law supporting their application.

## **Preliminary Issue Determination**

A preliminary issue arose in relation to the Tribunal's jurisdiction to hear this case. The Tribunal heard submissions from the respondent, the claimant and evidence from PW. The Tribunal is satisfied that there are no exceptional circumstances to allow the extension of the 6-month time limit as prescribed in the Act.

This claim was lodged outside of the six month time limit from the date of termination of employment imposed by the Unfair Dismissals Acts, 1977 to 2007. As there were no exceptional circumstances as described by the said Acts to cause this delay the Tribunal, therefore, rules that it does not have jurisdiction to hear this case and the claim necessarily fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)