

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – *appellant*

CASE NO.
UD1042/2011

v

EMPLOYER – *respondent*
C/O Smurfit Kappa Group, Beech Hill, Clonskeagh, Dublin 4

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

EMPLOYEE v
EMPLOYER

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 27th 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 appealing a recommendation of a Rights Commissioner ref r-096502-ud-10/JW.

Preliminary Issue:

It was decided at the outset, that the Tribunal would determine the preliminary issue in relation to a 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

paymentarising from his redundancy. The appellant was given the opportunity to read the waiver beforehe signed it. The purpose of the meeting was to conclude all final paperwork in relation to theredundancy.

Summary of Appellant's case

The appellant was on sick leave at the time of the meeting following an accident at work in April 2010. The appellant stated that he was told that if he did not sign the waiver he would not receive his cheque. He was not given an opportunity to seek representation or advice.

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.

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.

It is common case that the form of waiver and receipt incorporated a clause safeguarding the rights of the appellant in respect of a claim for personal injuries which he was pursuing against the respondent. The respondent asserted that the document was read out to the appellant prior to its execution by him, an assertion which the appellant who while accepting that he was given time to consider it, denied.

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)