

## THE HIGH COURT

[2013 No. 718 J.R.]

BETWEEN

ALAN BRADY

APPLICANT

AND

EMPLOYMENT APPEALS TRIBUNAL

RESPONDENT

AND

BOHEMIAN FOOTBALL CLUB

NOTICE PARTY

**JUDGMENT of Mr. Justice Barrett delivered on the 30th day of May, 2014**

1. The key issue arising in this case is whether an unfair dismissals notice was validly filed with the Employment Appeals Tribunal when it was filed before the alleged date of dismissal.

**Facts**

2. Mr. Brady was employed by Bohemian Football Club Limited as a bar manager from sometime in October 2008. On 16th December, 2011, he was dismissed from his employment by reason of redundancy. He asked when his dismissal was effective and was informed "Now." No written notice of dismissal was provided to Mr. Brady and no P45 form has ever been provided, despite its being requested. An unfair dismissals notice was completed on Mr. Brady's behalf, dated 22nd December, 2011, and lodged on 23rd December, 2011. The date of redundancy cited on the form is 16th December, 2011. Thus far the process appeared to be in conformity with section 8 of the Unfair Dismissals Act, 1977, as amended, which requires that, save in exceptional circumstances, a claim for redress under the Act be initiated within the period of 6 months beginning on the date of the relevant dismissal. In any event a Form T2 setting out the grounds of defence was received by the Employment Appeals Tribunal from Bohemian Football Club on 12th March, 2012. This made no reference to any alleged jurisdictional issue perceived to arise in the proceedings. Mr. Brady's claim came on for hearing before the Employment Appeals Tribunal on 3rd May, 2013, at which point Bohemian Football Club for the first time raised the issue that the unfair dismissals claim was out of time as it was received by the Employment Appeals Tribunal before the dismissal took effect when an alleged two-week redundancy period was taken into account. Mr. Brady contested and objected to these new arguments of Bohemian Football Club. However, by determination dated 5th September, 2013, the Employment Appeals Tribunal found, amongst other matters, that "*the claimant [Mr. Brady] filed his claim before the date of dismissal and therefore the Tribunal has no jurisdiction to hear the claim.*" As a result, Mr. Brady has had no opportunity for redress for his allegedly unfair dismissal. Moreover, the late objection of Bohemian Football Club deprived him the opportunity of curing the purported deficiency in the process through the simple expedient of lodging a further timely claim.

**Reliefs sought**

3. In the instant proceedings, Mr. Brady is seeking *inter alia*: judicial review by way of *certiorari* quashing the decision of the Employment Appeals Tribunal of 5th September, 2013, that it did not have jurisdiction to hear Mr. Brady's claim; judicial review by way of *mandamus* compelling a different division of the respondent to hear Mr. Brady's appeal; further, or in the alternative, a declaration that the Employment Appeals Tribunal has jurisdiction to hear the substantive claim; and further, or in the alternative, a declaration that Bohemian Football Club is estopped from relying on the jurisdictional point having regard to its actions.

**Estoppel of Bohemian Football Club**

4. In the recent case of *National Asset Loan Management Limited v. McMahon and Others; National Asset Management Limited v. Downes* [2014] IEHC 71, Charleton J. considers the modern law of estoppel at some length, stating, at para. 20:

*"Estoppel can arise pursuant to an oral or written representation, and that is the normal situation... Estoppel is based either on representations or on situations of behaviour that, reasonably construed, withdraw or alter the strictures of legal obligations in such a way that it would be unfair to later enforce these. Where the matter is one of representation, it should be easy to identify the legal term supposedly altered and the representation directed in this regard."*

5. In the present case, Bohemian Football Club gave the clearest indication to Mr. Brady that the termination of his employment had immediate effect from the moment it was advised to him. As mentioned in the above recitation of the applicable facts, on 16th December, 2011, Mr. Brady specifically asked when his dismissal was effective and was informed "Now." This express, oral representation by a representative of Bohemian Football Club was so clear and unequivocal that, reasonably construed, it would be unfair and inequitable to allow Bohemian Football Club subsequently to rely on the contention that in fact the date of dismissal occurred some two weeks later. Of course, while the court may and does consider that Bohemian Football Club was estopped by its actions from raising the contention aforesaid, this does not have the effect that the Employment Appeals Tribunal was wrong in denying jurisdiction to hear Mr. Brady's claim. If that denial was correct as a matter of law then it remains good, notwithstanding that Mr. Brady has successfully pleaded his estoppel argument before this Court.

**Time limits and the Employment Appeals Tribunal**

6. Section 8(2) of the Unfair Dismissals Act 1977, as amended, provides amongst other matters that:

*"A claim for redress under this Act shall be initiated by giving a notice in writing...to a rights commissioner or the Tribunal, as the case may be-*

*(a) within the period of 6 months beginning on the date of the relevant dismissal..."*

7. There is provision in the Act for a limited extension of this time period by a rights commissioner or the Employment Appeals Tribunal in defined circumstances. However, this is not relevant here. In this case the issue arising is that as a result of Bohemian Football Club's leaving Mr. Brady in no doubt that his employment terminated on 16th December, 2011, his lawyers promptly lodged an unfair dismissals notice with the Employment Appeals Tribunal on 23rd December 2011, only to be greeted, belatedly, on 3rd May, 2013, with the contention that Mr. Brady's unfair dismissals claim had been premature as it was received by the Employment Appeals Tribunal before the dismissal took effect once an alleged two-week redundancy period was taken into account. As mentioned above, the Employment Appeals Tribunal in effect found on 5th September 2013 that this last contention was correct and so declined jurisdiction.

8. A number of issues come into play at this point. The first is that prescribed time periods are typically intended to thwart the tardy, not punish the prompt. The second, is the longstanding principle of equity, good since at least the time of *Smith v. Clay* (1761) 3 Bro CC 639n, that "*Equity aids the vigilant, not the indolent*". The third is the practical issue of whether a person, here the Employment Appeals Tribunal, can be said not to have received notice within a prescribed period, if it had notice immediately prior to, at the commencement of, and throughout that period. It seems to the court that in the particular circumstances of this case it would be absurd to hold that where the Employment Appeals Tribunal had notice of the claim at the commencement of, and throughout, the six-month period, that Mr. Brady should be denied to opportunity to bring his claim because the Tribunal, through no fault of Mr. Brady, may also have had notice of the claim immediately prior to the applicable six-month period. The court finds support for this conclusion in the purpose that typically underpins prescribed time periods and in the equitable principle propounded in *Smith v. Clay* and referred to above. Moreover, the court considers that in reaching this conclusion no violence is done to the language of the Act. Section 8(2) requires that notice be given within the period of six months from the date of dismissal. It appears to the court that in the circumstances of this case, giving notice to the Tribunal on one date such that it has notice on another date, is within the scope of the legislation. Finally, and perhaps surprisingly, given that it is a decision of the Employment Appeals Tribunal that has led to the instant proceedings, the court notes that there is support for its conclusions in these proceedings in the case-law of the Employment Appeals Tribunal itself. Thus in *Matthews v. Sandisk International Limited* (UD331/2010) a claim for unfair dismissal was received by the Employment Appeals Tribunal on 14th January, 2010. It cited the date of the relevant dismissal as 4th January, 2010, whereas in truth it ended on 1st February, 2010, thus raising precisely the issue that was claimed to arise in the instant case, viz. that the claim was lodged previous to the period contemplated by section 8 of the Unfair Dismissals Act, 1977. In its decision in that case, the Employment Appeals Tribunal made the following observations, at 4:

*"The Tribunal holds that the filing of a notice in writing with the Tribunal prior to the date of termination of employment and therefore prior to the period of six months beginning on the date of dismissal but not withdrawn prior to the date of termination of employment constitutes the giving of notice in compliance with section 8 of the Unfair Dismissals Acts.*

*The Tribunal finds that by leaving the Form T1A with the secretariat to the Tribunal prior to the commencement of the statutory period the form was with the secretariat at the commencement of the statutory period and throughout that period. Therefore the claimant had given notice within the statutory period as well as for an additional period."*

9. Of course there will be some boundary in time and some circumstances in which an ostensibly premature notice will be found in fact to have been premature and thus not duly lodged within the appropriate time-period for the purposes of section 8(2). However, in this case, the purpose of the law, the principles of equity, the practical reality, and the previous case-law of the Employment Appeals Tribunal all lead to the same end, which is that the Tribunal does and did have jurisdiction to hear Mr. Brady's claim.

## **Conclusion**

10. The court orders that: (1) the decision of the Employment Appeals Tribunal of 5th September, 2013 that it did not have jurisdiction to hear Mr. Brady's claim be quashed; (2) a different division of the Employment Appeals Tribunal hear Mr. Brady's claim anew; and (3) the Employment Appeals Tribunal does have jurisdiction to hear Mr. Brady's claim. The court further declares that, having regard to the unequivocal representation of Bohemian Football Club on 16th December, 2011, that Mr. Brady's termination was of immediate effect, Bohemian Football Club is now, and in the circumstances of this case was thereafter, estopped from relying on the contention that in fact the date of dismissal occurred some two weeks later.