

## KR 01 of 2018

**If the Tribunal has contradictory versions concerning the public notification of an appointment, it will rely on the date of the notification made by post to an Appellant to count the 21 days delay to file an appeal.**

The Respondent has, in the present case, raised a preliminary point in law to the effect that the appeal made by the Appellant against the decision of the Respondent is time barred. Referring to section 3 of the Public Bodies Appeal Tribunal Act 2008, Counsel highlighted the fact that:

*“3. Jurisdiction of Tribunal*

*(1) Subject to subsections (2) and (3), the Tribunal shall hear and determine an appeal made by any public officer, or any local government officer, against any decision of the Public Service Commission or the Local Government Service Commission, as the case may be, pertaining to an appointment exercise or to a disciplinary action taken against that officer.*

*(2) An appeal shall be made –*

*(a) within 21 days of the notification to the officer of the decision referred to in subsection (1), or within 21 days of such public notification of the decision as may have been made, whichever is the earlier; ”*

In support of her argument, Counsel for Respondent called an officer of the Municipality of... , to produce (1) the public notification of appointment dated ... and (2) a letter dated ... addressed to the Appellant, informing him that the post of foreman has been filled in. The latter explained that there are three notice boards at the Municipality of ... and that one is near the reception, another in the

office and a third one in the building nearby where some other officers are posted. The one at the reception is found near one of the three designated places where employees put their fingerprints in the morning to clock in. The representative also stressed on the fact that the notification was posted on the website as well.

The Appellant deponed before the Tribunal and explained that he clocks in through his fingerprint identification, twice daily and that he has never seen the notification on the board. He maintained that the notification was thus never posted on the public board. He maintained that he checked the notice board regularly. He could only therefore rely on the letter of notification which reached him on the.... Indeed, the envelope in which the letter of notification was sent had a postage receipt dated ... and this is not challenged.

Counsel for Appellant submitted that the Tribunal has the ability to exercise its discretion and he referred to the judgments of *Carpede v The State & Anor* (2007 SCJ 265), *Toumany and Mullegadoo v Veerasamy* (2012 UKPC 13) where the courts had taken the stance that courts should be less technical and more flexible and where discretion should be used in exceptional cases where the interest of justice calls for it.

In our case, the legislator has deemed it essential to make the time limit for lodging an appeal within 21 days mandatory and has not favoured the Tribunal with any discretionary power in the matter.

The law is clear on the fact that the 21 days would run as from the date of notification to the officer “*or such public notification as may have been made, whichever is the earlier*”.

However, we are faced here with the fact that the Tribunal is in presence of two completely contradictory versions from both parties and the only factual evidence that it has is a letter from the Appellant with a postage receipt of the .... If that date is considered the notification date, then the appeal would fall within the delay of 21 days. In the absence of another witness who has ascertained to the Tribunal that he/she actually saw or posted the notification on the notice board, we are left with only the evidence of the representative who gave instructions for the notification to be posted but did not actually post it herself and that of the employee who stated never having seen it with his eyes there.

In the present circumstances, we consider that the notification date should be the ...which is the date of receipt of the letter of notification to the Appellant and we consider that the appeal has therefore been lodged within the time limit.

The Appeal will therefore be heard on the merits.