

MAKING IT WORK

Appearing in the Employment
Relations Authority

What is the ERA?

S157 Employment Relations Act 2000

- An investigative body
- Role of resolving employment relationship problems
- Establishes facts
- Makes a determination according to the substantive merits of the case, without regard to technicalities

How do I start an application in the ERA?

- Statement of problem
 - Describe the problem e.g. unjustified disadvantage? unjustified dismissal? wages owed?
 - What remedies do you want e.g. wages arrears (s131); lost wages up to 3 months (s123(b)); compensation for hurt and humiliation (s123(c)(i))
- Statement in reply
 - Respond to the problem and accept/deny the facts set out
 - Counterclaim/set off

Case Management Conference

The purpose of the Case Management Conference is to -

- ensure the issues (factual and legal) to be investigated are clear;
- consider whether other methods of resolving the problem would be helpful, such as mediation, going directly to the employment court, making a recommendation.
- setting a timetable for other steps that need to be taken before the investigation meeting eg, supplying further documents, making submissions, exchanging witness statements
- providing details of people to give evidence
- outlining the procedure for the investigation meeting
- setting a date, place and time for the investigation meeting

You will have an opportunity to comment on matters raised during the CMC.

The Authority will send out any timetabling orders made.

Investigation Meeting

Conduct at meeting

- **DO** wear formal clothing
- **DO** be punctual
- **DO** show respect for the Authority process
- **DO NOT** bring food or drink into the hearing
- **DO NOT** text or call on cell phones during hearing
- **DO NOT** make comments or express feelings during delivery of the decision

Investigation Meeting

- the introduction

The meeting usually begins with the Authority member –

- introducing themselves;
- establishing who is present and in what capacity
- outlining to the assembled parties the nature, order and conduct of the meeting, which may include witness order and confirmation of any procedure outlined during the CMC;
- stating any sworn witness statements will be taken as read subject to any corrections made at the beginning of the witness' evidence.

Investigation Meeting

- **Evidence/Witnesses**
 - Witnesses are sworn in and asked to confirm any evidence they may have given by written brief before they are questioned.
 - If there is additional evidence a witness needs to give at hearing, you should inform the Authority member as soon as possible. The Authority member shall determine whether your witness will be allowed to give any additional evidence. The member may adjourn the hearing to allow the other side to consider it and provide evidence in response.
 - Any additional evidence to be lead at hearing by open questions.
 - Open questions, as distinct from closed questions, are those which do not indicate the answer. A closed or leading question indicates the answer, e.g. “You did agree to the proposal didn’t you?” An open question leaves the answer open, e.g., “How did you respond to the proposal?”.

Investigation Meeting

- **Examination/Cross Examination**
 - The Authority member will determine the order of witnesses and who shall examine the witnesses and in what order.
 - If additional evidence is to be led, this should be done first
 - After the evidence of a witness has been led, the Authority member may ask questions or examine the witness.
 - There is then the opportunity for the other party to cross-examine. In cross-examination you are allowed to ask closed or leading questions. If you are cross examining you must put the key points of your case that differ from the evidence of the witness, to the witness, so that that witness has an opportunity to give his or her views on the point.
 - After cross-examination, the party that called the witness may re-examine that witness. That re-examination can only relate to matters that arose in cross-examination, and there should be open and not leading questions.

Investigation

- **Closing a case**
 - Once all the evidence is called, the parties give their closing submissions, where they state to the Authority member the propositions of law and fact on which they rely, and answer points raised by the other side. Normally the applicant goes first, the respondent second, and a short right of reply may be given to the applicant.

The role of the Authority Member

The Authority member has the tasks of controlling the procedures of the Authority, questioning witnesses, making any rulings that are necessary, and ultimately deciding the case.

The result or determination may be given at the conclusion of the case or given in writing at a later point if further information is required.

Case Study

Ken Pink was employed by “Nice Gal” Edie Cabot as a labourer on a job outfitting a Jewellery Shop, “Diamonds R Us”.

During the job some diamonds go missing. Mr Pink was spoken to by Ms Cabot and fired the same day.

Half of the workshop will represent the employee and the other half the employer. There are four roles - two parties (Mr Pink and Ms Cabot), two advocates (for the employee and the employer). The roles have been allocated.

You have received:

- Statement of Problem
- Statement of reply
- Briefs of evidence (1 employee/1 employer)
- Additional information for each party – **NOTE** do not show this information to the other party
- Instructions for the employee
- Instructions for the employer
- Tips for witnesses
- Closing submission outline

Following member introduction and questioning your group will have 30 minutes to consider the relevant brief of evidence and prepare your examination/cross examination. The advocate will then present your group’s case. Your party will be allowed to have their brief and additional information available to them during hearing.

When examination/cross examination is complete there will be a 30 minute break to draft closing submissions. An outline for closing submissions has been provided.

There will be time for questions and discussion.