

IT(EA)R Rule 5 – Time limit for appealing

IT(EA)R Rule 9 – Application for striking out

Fitzsimmons v IC

EA/2007/0049 and 0050

11th October 2007

Cases:

Facts

The Appellant made a number of requests for information from the BBC under the FOIA. The BBC refused to provide the information on the basis that it was exempt information due to s42 (legal professional privilege).

With regard to the first appeal, the IC a Decision notice was sent on 22 February 2007 and with regard to the second, a Decision Notice was sent on 19 March 2007, making the 28-day period for submission of a Notice of Appeal due on 22 March and 16 April respectively.

The Appellant did not receive either the Decision Notice dated 22nd February or the Notice dated 19 March 2007. The Appellant claimed that he did not receive any notification from Royal Mail that he had received a letter by recorded delivery. The documents were returned and then resent. The Appellant argued that so as far as he was concerned, the true date of issue was 12 May 2007 – the date he received it – and so the 28-day period ran from then.

Findings

The question for the Tribunal was whether or not there existed any ‘special circumstances’ under Rule 5 allowing the Tribunal to extend the time for appealing. The Tribunal found that nothing said by the Appellant with regard to the initial dispatch of both Decision Notices attracts any special circumstances, therefore it followed that it was not just and right to extend the time period.

In both of those cases the Tribunal expected persons in the Appellant’s position to have made appropriate arrangements for receipt or redirection of the items which had been sent, or at least to provide a reason as to why he could not, or chose not to collect the item.

The Tribunal entertained that if generous view of the Appellant’s contentions were to be taken, he nonetheless remained out of time on the basis that at the very latest the 4 May letter from the IC was received by the Post Office for dispatch on 8 May and therefore the 28 day period would have concluded on 5 June 2007. The Appellant maintained that he did not receive the 4 May letter until 12 May but the Rules make it explicitly clear that the date of receipt is irrelevant.

The Tribunal noted that the Appellant may have felt that no proper or any consideration had been afforded by the Tribunal to the merits of his Appeals. However, Rule 9(1) makes it quite clear that in considering the present type of application the only question is whether the IC has properly come to the opinion that an appeal “does not lie too, or cannot be entertained by, the Tribunal”. In effect it was a purely procedural issue.

Conclusion

The Appellant failed to comply with the 28-day period running from the date of initial dispatch by special delivery of both Decision Notices for submitting his Notice of Appeal. The Tribunal finds no special circumstances which assist the Appellant with regard to that finding.

Observations:

The Tribunal recommended that in future cases the IC consider whether the latest date for appeal or response should be stated in terms and/or otherwise included in the body of the form of the Decision Notice which was used.