

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
2 Employers

CASE NO.
UD1335/2006

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

Employee

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. J. Reid
Mr. B Byrne

heard this appeal at Dublin on 8th May 2007

Representation:

Appellant: In person

Respondent: In person

This case came to the Tribunal by way of appeal against Rights Commissioner Recommendation r-043013-ud-06/JT.

The determination of the Tribunal was as follows:-

Appellant's Case:

The appellant gave evidence. The respondent was employed as an on site labourer, doing fire-proofing. He was employed in 2004. There were no problems in 2004 or 2005. The company was unionised in January 2006. The trouble started when the respondent joined the union. He came in late, sometimes he did not come in at all. His attitude changed. The appellant was aware the respondent's mother-in-law was ill.

Following unionisation rates of pay increased for all employees. The rate paid to each employee depended on length of service and the position held. There was no agreement regarding retrospection.

On 10th March 2006, the respondent was given a written verbal warning for unsatisfactory work performance. On 9th May 2006, the respondent 'could not be found'. He said that he had trouble with his car. The appellant sacked the respondent. No grievance procedure was applied.

The appellant's son gave evidence. He did not remember a meeting with the respondent and his union representative and another employee to discuss retrospective pay increases. There was a meeting to discuss another warning for the respondent. The witness did not agree a settlement package.

Respondent's Case:

The respondent gave evidence. His girl friend's mother died in April 2006. His supervisor knew of his situation and allowed him time off. He felt that he was sacked for looking for back pay.

Determination:

Dismissal as a fact was not in dispute in this case. It therefore fell on the appellant to show that the dismissal of the respondent was not unfair. The Tribunal finds that the procedures used by the appellant were defective and that therefore the dismissal was unfair. The Tribunal awards to the respondent the amount of €4000.00 under the Unfair Dismissals Acts, 1977 to 2001. An award of €1174.00 is made under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, the total award is €5174.00. The recommendation of the Rights Commissioner is varied.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)