

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employee

CASE NO.
UD2/2007

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

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. D. Moore
Mr. C. Ryan

heard this appeal in Dublin on 31 May 2007

Representation:

Appellant(s) :

Ms. Geraldine Lockhart, Lockhart & Co., Solicitors,
7 Annesley Bridge Road, Fairview, Dublin 3

Respondent(s) :

No legal representation

The determination of the Tribunal was as follows:-

This case came to the Tribunal by way of appeal by the employee against Rights Commissioner Recommendation r-043117-ud-06/TB. At the Rights Commissioner hearing on 8 November 2006 the respondent did not attend and the Rights Commissioner recommended that the respondent pay the employee the sum of €4,000.00.

Respondent's Case

Sworn evidence was given on behalf of the respondent company by the managing director (hereafter referred to as MD) that the appellant (hereafter referred to as P) had been very unreliable and had been absent from work for some twenty-one days in 2006 before P's employment ended in May of that year. MD told the Tribunal that P had taken a week off when P's mother had been ill, another week when P's father had been ill, another week when P himself had been ill and another week when P's brother had been beaten up and was in intensive care in Beaumont Hospital.

P had been late for work every day. MD rang P at about 9.15 a.m. or 9.20 a.m. to see if P was coming.

At about 7.30 a.m. on Wednesday 17 May 2006 P came with his father to MD's home and told MD that he had to leave the country immediately because he was in fear of the former boyfriend of his girlfriend. P was going to the U.S. until matters calmed down and would be in touch. P offered MD a replacement person but MD declined.

On Monday 22 May P turned up for work but MD told him that his job was gone.

Asked by the Tribunal if he had given P warnings, MD replied that he had spoken to P a hundred times about being late. Asked if he had given P any written warnings, MD said that he had not done so.

Under cross-examination, MD confirmed that P had worked for him from June 2004 to May 2006. MD said that around March 2006 P had told him that P would go on holiday to the U.S in late June or early July and that MD told P that P should have consulted him.

It was put to MD that P would say that he had told MD at Christmas 2005 about his 2006 U.S. holiday plan. MD replied by insisting that he had been told of it in March 2006.

It was put to MD that P had, on 17 May 2006, just asked for 17-19 May off. MD replied that P had said that he had to leave Ireland at once, that thugs were chasing him and that he would be in touch.

MD was asked why, if P was leaving the country, P would book a holiday for ten days later. MD replied that he did not know but that P had said that he was going that very day.

At this point in the Tribunal hearing, P's representative tried to clarify matters for the Tribunal by saying that P had wanted to bring his holiday forward because he had been threatened by his girlfriend's former boyfriend. On 18 May 2006 P had "unbooked" his holiday and had brought it forward by about a month. P had offered MD the services of a former employee to cover P's absence.

P had made the gesture because he was asking for an extra three days. The cover would also be for the holiday.

Under further cross-examination, MD said that P had not asked for three days off but had said that he was going to the U.S. indefinitely. MD had been surprised when P had come in on Monday 22 May 2006.

MD told the Tribunal that he had no records with him regarding leave taken by P. MD conceded that he had given P no terms or conditions of employment, no grievance procedure and no disciplinary procedure. MD said that the only people working for the respondent company had been himself, P and "a part-time girl". He had given P payslips when requested.

Asked about the fact that he had not given P any written warnings, MD said that he had intended to retire in July 2006, that he had tolerated P's lateness and that he had told P that he could rent the premises if he wished. MD did not have anyone to whom he could give the business.

Under further questioning by the Tribunal, MD said that P had had a lot of absenteeism and that P was not paid for some weeks that he was absent although MD would normally give half-pay if someone was out sick.

MD told the Tribunal that there had been no mention of P wanting three days off. P had said that he had to leave the country immediately and that people were out to kill him. P said that he would be back in touch. Given P's previous record of absences, this was "the last straw" for MD.

Appellant's Case

Giving evidence, P (the abovementioned appellant) confirmed that he had worked for the respondent company from June 2004 to May 2006. He was a full-time employee. He received no written warnings in that time.

In December 2005 or January 2006 P booked a holiday for three weeks from 24 June. He had to pay everything up front in January or February of 2006.

On Wednesday 17 May 2006 P went with his father to see MD. P had been seeing a girl. The girl's "ex-fella" was giving "hassle". P wanted a break. P asked MD if he could take three days off and take his holidays early. P told MD that he (P) could get a friend in who knew the work. MD agreed to give P three days off and agreed that P could take his holidays in late May. P did not want to see MD "stuck". The fellow that P was getting in would have helped MD.

On Monday 22 May 2006 P had reorganised his holiday and was at work when MD told him that he was "sacked" and that he should leave the premises. MD paid him for 15 May and 16 May.

P had previously taken leave after he had collapsed after gas was released from a refrigerator. Tallaght Hospital checked him out and he went to his GP who gave him a medical certificate for a week off.

P was also off for a week after a splinter of metal went into his eye when he had been cutting ducting. The splinter was removed in the Mater Hospital and he got a letter from the Mater Eye Clinic.

P also took 2.5 days off when his father was ill. He told MD about this and there was no problem. His mother was not ill and his brother was not beaten up. It was not true that he was often late or had to be telephoned.

P received no terms or conditions of employment or grievance procedure or disciplinary procedure. He received three payslips when he requested them.

When MD was given the opportunity to cross-examine P at the Tribunal hearing, MD said that there were goggles at the respondent company's premises but that P had never used them and that P "should get his memory checked". MD said that P had been late every day and that P's mother, "a very nice woman", had not been able to get P out of bed.

Questioned by the Tribunal, P said that he had very seldom been late for work. 9.00 a.m. was the

start time. Maybe he had been late on one or two occasions. He accepted that he had been late for work on an occasion when his car bonnet blew up smoke and he had to wait for his father to collect him.

P said that he had been sitting on a wall with his girlfriend between 10.30 p.m. and 11.00 p.m. one night when they were confronted by her jealous “ex-fella”. P got into his car and went off. He stayed with a friend because he did not want his car damaged. He was not fearing for his life. He was just worried about his car. He had taken out a loan for it.

P went to MD and looked for three days off saying that he would try to bring his holidays forward. P was “trying to organise everything”. He had to try to get his travel agent to change his holiday and he had to go to his credit union policy committee if he incurred a debt of over ten thousand euro. He offered MD a replacement because he did not want to see MD lose business. He was giving MD a week-and-a-half to get cover. If MD had said no he would not have gone.

P had got on well with MD and was shocked on Monday 22 May 2006 when MD told him that he was dismissed and to leave the premises. P did not ask for a reference. It took “two or three months” to get a reference. P was to have taken two weeks’ leave in June and a further week at his own expense. He went to the U.S. on 27 May 2006 but came back a week early as he had run out of funds. He parked his car in the airport while he was away. His car could not be touched while “under security”.

Giving evidence, P’s father (hereafter referred to as H) said that he had attended the meeting on Wednesday 17 May 2006. H got a call at about 7.00 a.m. telling him that P’s car was broken down on the M50. H collected P at the toll bridge and they went to MD’s house. P rang the doorbell and told H to go in. MD told H to come in.

H told the Tribunal that P “was more or less afraid that he might get beaten up”. P told MD that he was having problems and that he wanted three days to bring his holidays forward so that things could blow over. MD made no objection and did not say that he intended to sack P.

In cross-examination, MD put it to H that P had had twenty-five or thirty jobs before working for MD. H replied that P had had one previous job.

Determination:

Having considered the evidence adduced, the Tribunal finds that there was a procedurally unfair dismissal of the appellant but that the appellant made a huge contribution to his dismissal. The Tribunal upholds Rights Commissioner Recommendation r-043117-ud-06/TB in finding that there was an unfair dismissal within the meaning of the Unfair Dismissals Acts, 1977 to 2001, but the Tribunal varies the amount of compensation to be paid to the appellant from the €4,000.00 recommended by the Rights Commissioner in the employer’s absence. Having heard evidence from both sides, the Tribunal deems it just and equitable that the compensation to be paid to the appellant under the Unfair Dismissals Acts, 1977 to 2001, for his procedurally unfair dismissal be €2,000.00 only.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)