

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employer

UD409/2007

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: Mr M. O'Connell B.L.

Members: Mr. M. Flood
Ms M. Maher

heard this appeal at Dublin on 30th August 2007

Representation:

Appellant :

Mr Finian Kilty, Financial Controller

Respondent :

In Person

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an appeal by the employer against the decision of the Rights Commissioner Ref: r-044008-UD-06/JT dated 4th April 2007

The employer is hereinafter referred to as the appellant and the employee as the respondent

Appellant's case:

The respondent worked as a cable installer and commenced his employment in April 2005. In the beginning he was a helper in the van. Prior to his dismissal there had been a build up of lates and jobs that had gone wrong and the respondent knew the appellant had no option and he put the keys in front of witness. As a junior he would not have had the responsibility of others and once he got his full licence around Christmas 2005 he could go in the van himself. He was training for two weeks.

The appellant was a contractor for NTL and two months after the respondent going out on his own there were complaints by email in relation to his work. These complaints ranged from cable not

replaced, a hole left in a ceiling to cables hanging in the middle of the wall. The respondent was asked to go back and fix up whatever the customer complained about.

Prior to his dismissal the appellant spoke to him concerning lates. 9am was the starting time however frequently he would come in at 9.15am/9.30am. When he was spoken to about the lates the response was, no problem, and for the remainder of the week he would be in on time would then revert to his old ways. Copies of the complaints from NTL customers were shown to the Tribunal. Witness spoke to the respondent and showed him copies of the email complaints. He agreed that he did not show him every single one of the emails and he could not specify which days he was late.

In answer to questions from Tribunal members asking if he should have tried harder with the respondent he said he had seventy other lads and he was not the only one who made mistakes but it was rare that the same person continued to make mistakes. In early April 2006 he handed the respondent a written warning but did not keep a copy of same. In the beginning he was happy with his work but the problems seemed to arise when he was working on his own around February or March 2006.

Respondent's case:

The respondent worked as a helper and then got his full licence. He never got the emails referred to. There was a shelf in the office for his and his colleagues work and the emails were put on this shelf. On 14th June 2006 he received a telephone call to say his work was not acceptable. He fixed that job and was then called to the office and was told that NTL did not want him doing any more of their work. He did not receive any warnings. He was never told prior to this of complaints about his work. He was never late for work when he was a junior as he had to wait for the van and he never had to be in for 9am. He was in every morning at 8.15am/8.30am. Its possible that the emails did come in but he did not get them and was not notified about them. Regarding the telephone call to say his work was unacceptable he said that while carrying out work in a house the husband said to leave the cables as wardrobes were to be fitted however when his wife came home and saw the cables she did not want them left like that.

In answer to questions from Tribunal members witness said that there are fifty pigeon holes where the work is left for the day. When he was a junior he remembered others getting emails with a note to speak to the operations manager. When he was a senior he sometimes had a helper but it was common to go out to do a job on ones own. He never got verbal or written warning.

Determination:

Having heard all the evidence the Tribunal has credibility concerns regarding both parties. However the Tribunal feels in the circumstances that the dismissal was unfair and accordingly

awards the respondent the sum of €3,500 under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

