

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:

CASE NO.  
UD735/2008

Employee

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

Employee

and

Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J Flanagan BL  
Members: Mr D Winston  
Mr P Woods

heard this appeal at Dublin on 10<sup>th</sup> October 2008

Representation:

\_\_\_\_\_

Appellant(s): The appellant in person

Respondent(s): XXXX

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an employee appealing against the recommendation of the rights commissioner reference r-059447-ud-07/JC

**Determination**

The appellant was accompanied to the Tribunal by an individual from the Citizen Information Centre. The Tribunal considered whether it ought to allow this person to act as her representative. The Tribunal noted that this individual had sent off the appellant's form to the Rights Commissioner without retaining a copy either for himself or the appellant and without even

a note of the appellant's name, address or telephone number so that when the Rights Commissioner sent a registered letter to this individual he was unable to contact her with the information that the hearing before the Rights Commissioner had been scheduled as a result of which no attendance was made by the appellant. Furthermore, the representative himself did not attend at the hearing with the result that the appellants claim before the Rights Commissioner failed for want of prosecution. In the course of the openings it also emerged that the appellant had a stateable case in relation to minimum notice which was not indicated on the form. The individual from the Citizen Information Centre who had attended with the intention of representing the appellant admitted that he had never before represented any person before any employment rights body nor had he received any training to do so. His only experience of any relevance was in relation to social welfare appeals – the Tribunal noted that such appeals are appeals of an administrative nature and quite different in character to an appeal before the Employment Appeals Tribunal. The Tribunal also expressed some concern about the extent for which such a person acting as a representative could be a mark for damages in respect of any claim for professional negligence that may arise. The Tribunal declined to permit this individual to act as a representative and indicated that he was welcome to remain and provide such support and assistance to the appellant as she may require short of acting as a representative.

Both parties outlined their cases to the Tribunal. The appellant admitted that she had obtained a sick certificate from her general practitioner who knowingly granted it to her to cover a period when she was going on holidays to the United States with her husband. The respondent found out about this deceit and dismissed her without a hearing. Very shortly thereafter the employer invited her to attend at a disciplinary hearing the very next Monday. The appellant agreed to attend but having consulted with her husband the appellant decided not to attend the disciplinary hearing. The Tribunal is satisfied that the respondent rescinded his notice of dismissal and in agreeing to attend the disciplinary hearing the appellant accepted that she remained on as an employee. The appellant in failing to attend at the disciplinary hearing that Monday or indeed to attend at work at any subsequent stage resigned her employment.

The appellant told the Tribunal that she had worked a forty-hour week for the respondent and that she was also pursuing a course of education that involved a further twenty hours work per week. The appellant had used all her holiday leave in order to facilitate the sitting of examinations. The appellant's general practitioner believed that the stress occasioned by this workload might be contributing to a reduction in the level of infertility of the appellant. The general practitioner recommended that she cut back on her level of effort but the appellant was unwilling to do so. The general practitioner furnished the appellant with a sick certificate stating that the appellant was unfit for work for the reason "fatigue investigation." The appellant admitted that she did not attend any medical professional for the entire period covered by the sick certificate, but went the very next day to Orlando, Florida on holidays with her husband.

The Tribunal was satisfied to determine the matter on the basis of the facts as admitted by the appellant in her opening statement. The appellant expressed her unhappiness with this course of action and the Tribunal offered to the appellant the opportunity to state any other matters to the Tribunal that she considered might be of relevance. The appellant commenced to outline matters which consisted either of a justification of her dishonesty in attempting to deceive her employer or an attempt to criticise her employer in a manner which the Tribunal considers irrelevant to her case. The appellant was advised that given the lateness of the hour the case would have to go into a further day and although the appellant was offered such time as may be necessary to deal with any additional matters on oath the appellant was also warned that if she was to pursue the case in a manner which the Tribunal considered to be frivolous or vexatious then the Tribunal would not

hesitate to award expenses as allowed by statute against the appellant. Ultimately the appellant accepted that she had no further matters that she wished to put before the Tribunal.

The Tribunal upholds the recommendation of the Rights Commissioner and dismissed the appellant's claim under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)