

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

Employer
– *employer*

CASE NO.
UD776/2008

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

Employee - *employee*

and

Employee - *employee* UD996/2008

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

Employer - *employer*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S.C.

Members: Mr. F. Moloney
Ms. K. Warnock

heard this appeal at Navan on 3rd December 2008

Representation:

Employer: In person

Employee: In person

(This case came before the Tribunal by way of an appeal by the employer and contra-appeal by the employee against the recommendation of the rights commissioner; R-061529-UD-08/RG dated 23 July 2008).

The determination of the Tribunal was as follows:-

This case involved two appeals, the first by the employer who appealed the basis on which the rights commissioner found the dismissal of the employee unfair, and the second by the employee on the amount of compensation awarded.

The employee was dismissed for falsifying timesheets and the company produced evidence to the

Tribunal to support this case. The employee agreed that he had done wrong but in extenuation; he said that he had been given permission by Mr. F to take some time off because of domestic issues. He agreed however that he had abused this permission. He said that he had come to an agreement with Mr. F whereby he said that he would work back the time shortfall. He did this but later he was paid for those extra worked-back hours. The employee denied that he had been given any warnings by Mr. F but agreed that Mr. F had discussed the matter with him.

On behalf of the employer, it was said that the written evidence provided to the Tribunal related only to November and December 2007, and that the conduct of the employee went back to at least as early as June. However, the employer produced no evidence to support this. Moreover, Mr. F, who was a principal of the company, did not attend the Tribunal hearing so the Tribunal heard no evidence to substantiate the employer's case as to warnings or to contradict the employee's claim that he had been given permission to flexibility. The employer's representative did agree that the employee had been allowed to work back the short fall of hours (although there was disagreement as to whether eighteen hours or twenty-four hours had been owed) and also agreed that the employee was subsequently paid for those extra hours.

The employee also said that Mr. F had told him that he could continue to work and that his position would be reviewed after Christmas. Mr. F was not present at the Tribunal hearing to contradict this. In the event, the hours worked which were supposed to make up the shortfall were paid at the time of the employee's dismissal.

The Tribunal was not impressed by the case made by either party. The employee did not contest the documentary evidence shown to the Tribunal. He admitted that he had done wrong and he knew that it had been wrong at the time of doing it. On the other hand, Mr. F did not attend the hearing to challenge what the employee had put forward as extenuating circumstances.

In the view of the Tribunal, the employer had shown "substantial grounds justifying the dismissal" within the meaning of section 6 of the Act of 1977. However, section 5 of the amending Act of 1993 provides that "*in determining if a dismissal is an unfair dismissal, regard may be had...if the Tribunal...considers it appropriate to do so—*

(a) to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal, and

(b) to the extent (if any) of the compliance or failure to comply by the employer, in relation to the employee, with the procedure referred to in section 14 (1) of this Act or with the provisions of any code of practice referred to in paragraph (d) (inserted by the Unfair Dismissals (Amendment) Act, 1993) of section 7 (2) of this Act".

The Tribunal is of the view that the manner in which the employer went about the dismissal showed inconsistency and lack of fairness and they did not follow any procedure. For this reason, the Tribunal finds that the dismissal was unfair within the meaning of the amending Act, notwithstanding the "substantial grounds" shown. The employer's appeal against the recommendation of the rights commissioner under the Unfair Dismissals Acts, 1977 to 2001 therefore fails.

In assessing compensation, the Tribunal has had regard to the "substantial grounds" that have been shown. The best case that the employee could make was to raise extenuating circumstances. He did not and could not justify his conduct. The amount of compensation must reflect this. Under section 7(1)(c) of the Act of 1977, compensation is to be in respect of "*any financial loss incurred by him and attributable to the dismissal as is just and equitable having regard to all the circumstances*".

The employees appeal was that “I was unemployed for 6 months and €1000 does not compensate for this”. The Tribunal would not consider it “just and equitable” to compensate the employee for all of his financial loss, or even a major portion of it. After due consideration, the Tribunal is of the view that it would be “just and equitable having regard to all the circumstances” to make a modest rather than nominal award. The employee’s appeal against the recommendation of the rights commissioner under the Unfair Dismissals Acts, 1977 to 2001 therefore succeeds and the Tribunal varies the nominal award of €1000.00 made by the rights commissioner to a modest award of €5000.00.

Determination

1. the Tribunal finds the dismissal unfair under section 5 of the amending Act of 1993.
2. the Tribunal awards the employee €5,000.00 under section 8 of the Act of 1977.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)