

## **EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO.

Employee

UD679/2008

against

Employer

under

### **UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Mr D. Hegarty  
Mr D. McEvoy

heard this claim at Waterford on 10th February 2009

### **Representation:**

Claimant : Ms. Geraldine Malone, Branch Official, SIPTU, Connolly Hall,  
Summerhill, Waterford

Respondent : Purdy Legal, Solicitors, New Docks, Lough Atalia, Galway

The determination of the Tribunal was as follows:

The Tribunal secretariat received the claimant's T1A form on 3 July 2008. The claimant's stated the date of receiving his dismissal notice was 9 January 2008. The respondent was notified in the standard way that it was facing a case concerning one of its former employees. A hearing was set down for 10 December 2008. On 2 December the respondent was granted a postponement for that hearing without the consent or knowledge of the claimant or his representative. It was then listed for hearing in Waterford City on 10 February 2009. A form T2 from the respondent was finally submitted to the secretariat on 19 January. On 28 January the respondent sought a further postponement of this hearing. This time the claimant and his representative were informed of that application and exercised their right to oppose it. The application was refused and the case remained scheduled for hearing on 10 February. On 30 January the claimant's representative obtained approval from the Tribunal for the services of a Russian language translator for this hearing.

On the hearing day the claimant, his representative, the translator and another witness appeared for this hearing. The respondent and any possible witnesses on its behalf did not appear. However, a solicitor for the respondent did appear and duly applied for a postponement of the hearing. Again the claimant and his representative objected to that application.

Having considered the application the Tribunal unanimously decided to refuse the application to postpone. The Tribunal was satisfied that all parties were properly notified of this hearing and were aware of the background to having the case prosecuted. Furthermore the Tribunal also took into account the fact that the claimant's employment with the respondent had ceased in excess of twelve months prior to this hearing. The case therefore proceeded. The respondent's solicitor protested at this outcome and added he had no instructions on this case.

Dismissal was not in dispute in this case and therefore the respondent was obliged to commence the hearing to show that in the circumstances it was not an unfair dismissal.

### **Respondent's Case**

No evidence adduced.

### **Claimant's Case**

The claimant commenced employment as a general operative with the respondent in September 2001. Up to late 2007 he had a good attendance record and all absences through illness were medically certified. Following the commencement of his employment he was neither furnished with his terms and conditions of employment nor issued with a contract of employment. Consequently he was not supplied with grievance and disciplinary procedures.

The witness was a citizen of the Ukraine and by autumn 2007 he had a wife and child living with him and substantially depending on his income. In late September 2007 the witness booked a return trip for himself and his family from Dublin to Kiev from 18 December 2007 to 10 January 2008 for recreational and medical reasons. When he informed his immediate supervisor of this trip it was indicated to him that there was no difficulty with those dates. That situation changed however in October 2007 when the general manager announced that the winter break for all staff was from 22 December to 9 January 2008. Upon hearing those dates the claimant approached his manager about his holiday date. That manager consistently dismissed and ignored the claimant's approaches. The witness's appeal to the general manager also fell on deaf ears, as that manager's attitude was that the claimant's situation was not his problem and that he could not change anything.

Upon returning to the respondent on 14 January the claimant was suspended. The following day he was asked to attend a meeting without being invited to have representation and during the course of that meeting was dismissed by the general manager.

In cross-examination the witness said that the respondent's Christmas breaks were different from year to year. He booked his flights prior to discovering when such holidays were to be for 2007/08. The respondent did not make the Christmas holiday dates known prior to his booking. The claimant acknowledged there was a company handbook in an office on the respondent's premises but said it was only in English, a language he did not understand. There was also "a piece of paper" on a wall, which was not brought to his attention.

When his manager refused to change his stance on his travel plans the claimant informed him that he had no option but to travel as planned. Both he and his family had medical and social commitments to fulfil in the Ukraine. By October when the respondent announced their Christmas break the only remaining seats left on the flights were in business class and due to the claimant's financial restraints he was not in a position to purchase such seats. His wife and child were not prepared to travel without him. The general manager stated that this affair was not his business.

The claimant did not expect to lose his job as a result of this situation but when that happened he appealed it. That appeal was unsuccessful and the claimant's dismissal was confirmed.

A contemporary work colleague of the claimant's who was familiar with his situation outlined the claimant's case. The claimant booked his flight on the internet and was obliged to pay immediately and fully to secure the seats for himself and his family. This was done in the most economical way some three months prior to their intended departure date. The claimant's immediate supervisor who knew about the booking following its application said those dates were fine. Within one month the respondent announced the fixed winter break and upon learning of those dates the claimant approached his manager about his situation. That manager totally disregarded the claimant's approaches and on one occasion tore up the claimant's paper work in relation to alternative flights. The witness stated that this manager ridiculed the claimant and his application for leave.

For translation purposes the witness accompanied the claimant to the general manager as a last resort over this issue. That manager refused to engage with the situation declaring it was not his problem. The witness remarked that the claimant needed to go to the Ukraine to attend to a spinal ailment and that such treatment could only be done there.

## **Determination**

The Tribunal is satisfied that the respondent was given all reasonable opportunity to present their case. There is no doubt the respondent was aware of this hearing. The respondent and their potential witness(es) failed to appear.

Based on the uncontested and uncontradicted evidence from the claimant's side the Tribunal finds that he was dismissed unfairly by the respondent. The claimant was neither furnished with a grievance procedure nor made aware of a disciplinary process which he was subjected to. It was somewhat unreasonable for the respondent to delay announcing their set dates for the Christmas/New Year break so late in the year especially to a workforce that contained foreign workers. Management's inflexible and indeed hostile reaction to the claimant's request to take his booked leave was unnecessarily harsh. There was no evidence that the respondent was in any way discommoded or disadvantaged by the claimant's personal arrangements.

The claimant on the other hand acted unilaterally and without consultation with the respondent in booking his flight. He did not enquire from his former employer whether his absence during that planned period would be detrimental to the respondent's work schedule. This omission, however, was a much lesser offence than the respondent's treatment of him prior to and subsequent from his overseas trip. The manner of the dismissal lacked proper procedure and was contrary to natural justice.

The Tribunal awards the claimant €10,000.00 as compensation under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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