

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

CASE NO.
UD810/2008

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

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)
Chairman: Mr E. Murray
Members: Mr. M. Forde
Dr. A. Clune

heard this appeal at Limerick on 26th February 2009

Representation:

Appellant: Ms Mary McEllgott, Siptu, 4 Church St, St Johns, Limerick
Respondent: XXXX

This matter comes before the Tribunal by way of an appeal of a decision of the Rights Commissioner ref: r-056898-ud-07/POB. The Claimant's representatives indicated that they were not proceeding with any claim other than that under the Unfair Dismissal Acts.

The Claimant gave evidence that he was employed with the Respondent Company since 2003. He had commenced employment with the Respondents in September 2005 under a fixed term contract. He subsequently had three renewals of the contract. On the day of his dismissal he was called by his Shift Supervisor to go to the area office and was told that he was needed there. His Shift Manager and an official of the HR Department were present in the office when he arrived. He was told that the Company had decided to let him go. They gave him a letter advising him of the termination of his contract. He was then asked for his security badge and was escorted off the premises. He was not given an opportunity to empty his locker or collect his belongings. When he got to the gate his Shift Supervisor told the Security Man that he his employment was finished and that he was not to be readmitted to the premises. His wife who was also employed by the Respondent Company had to collect his personal belongings from his locker. He previously received a written warning over an incident with a Supervisor and had appealed the warning to a Rights Commissioner. He felt that this was what was really behind his dismissal. He said that on his dismissal his heart was broken as he had a mortgage and two children to support and couldn't understand how he was treated in the manner in which he was. He subsequently arranged to have a meeting with the HR Manager of the Respondent Company and this meeting was arranged for the South Court Hotel in the first week of October 2007. He was given no concrete reason for his dismissal but alleged that the HR Manager told him that the Company "didn't like people who gave them problems".

He is not now employed but is doing a business studies course and has applied for a PSV licence. He has also done some security work. He said that the Company were recruiting contract workers

at the time so there was no real basis for letting him go at that particular time.

Evidence on behalf of the Respondent Company was given by the HR Manager. He said that a Senior HR Generalist had attended a meeting regarding the non-renewal of the Claimant's contract.

The Claimant's entitlements had been paid in full. He acknowledged that agency workers were being employed at the time to deal with spikes and peaks in production and this bore no relation to the termination of the Claimant's contract, and they simply exercised their right to terminate the contract on its expiry. He said he would be bitterly disappointed if he thought that the Claimant had been escorted off the premises in the manner described but unfortunately the persons who actually dismissed the Claimant were not available to give evidence. With regard to the policy of the renewal of fixed term employees he said that the renewal of the contracts was entirely performance related. He acknowledged that people who would have started work with the Claimant were still employed; people whose contracts were not renewed may not have been up to the mark. The allegations about the manner of the Claimant's dismissal had never been made to him before.

Determination:

Whereas the contract of employment entered into between the Claimant and the Respondent in this case appear to comply with Section 2 of the Unfair Dismissals Act 1977, nonetheless the Tribunal must consider the provisions of the Protection of Employees (Fixed Term Work) Act 2003, one of the objectives of which is to establish a framework to prevent abuse arising out of the use of successive fixed term contracts.

In this case the Tribunal accepts the uncontroverted evidence of the Claimant that he was called out during the middle of his shift, was given a letter dated the 20th of September 2007 advising him of his dismissal, that this provided for the payment of one weeks pay in lieu of notice, that he was relieved of his security pass and was escorted off the premises without being given the opportunity to finish his shift or even to recover his personal belongings from his locker.

In the circumstances the Tribunal is not satisfied that the expiry of the contract was the bona fida reason for the termination of same and in those circumstances the Tribunal finds in favour of the Claimant herein. The Decision of the Rights Commissioner ref: r-056898-ud-07/POB is upset.

The Tribunal finds that compensation is the most appropriate remedy and awards the Claimant €15,000.00.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)