

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employee - *appellant* UD218/2009

CASE NO.

against the recommendation of the Rights Commissioner in the case of:
Employer - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr P. Pierson
Mr J. Le Cumbre

heard this appeal at Tullamore on 3rd November 2009

Representation:

Appellant(s) : Mr Frank Taaffe, Francis B. Taaffe & Co, Solicitors, Edmund
Rice Square, Athy, Co. Kildare

Respondent(s) : Ms. Aoife Smithwick, Morrissey & Co., Solicitors, Lismard
House, Tullow, Co. Carlow

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an employee appealing against the recommendation of a Rights Commissioner under the Unfair Dismissals Acts 1977 to 2007 ref.: r-067570-ud08/TB

Respondent's Case

The respondent gave evidence that he employed the appellant as a foreman plumber in June 2006. He hired him as the business was expanding and he had contracts with a number of Co. Councils one of whom was Westmeath Co. Council. It was a requirement of Westmeath Co. Council that all work carried out by the respondent be completed by a qualified plumber. Due to a downturn in business and the failure of the contracted work with Westmeath Co. Council to materialize he had to let go a number of employees including the appellant. Redundancies were ongoing from January 2008 until June 2008 and employee numbers were reduced from 14 to 6. The appellant was given his notice on the 16 May 2008. His employment was terminated on the 30 May 2008 but he was re-employed one week later and worked for two days. His employment was finally terminated on the 10 June 2008 and subsequently it came to the respondent's attention that the appellant was not a qualified plumber with FAS accreditation, and accordingly he could not have been re-employed if

more work became available. The respondent had taken the appellant at his word that he was a qualified plumber when he was first employed.

Appellant's Case

The appellant gave evidence that he started working for the respondent as a plumber in June 2006. Some months into his employment he was made a foreman plumber. He had 13 years experience as a plumber and no doubts were ever raised about his competency. Another employee who had less service with the respondent was retained in employment after he (the appellant) was dismissed. He never told the respondent that he was a FAS accredited plumber and he was never asked by the respondent if he was a qualified plumber. He was not concerned about his qualifications as a plumber because he was a foreman and he knew his work.

Determination

The Tribunal notes that both parties made an issue of the appellant's lack of qualification as a plumber. However the Tribunal do not consider this evidence relevant to the point at issue, due to the fact that the appellant's lack of qualifications only came to the attention of the respondent after the dismissal.

The Tribunal is satisfied having carefully considered the evidence from both parties that the appellant was not unfairly dismissed and therefore upholds the recommendation of the Rights commissioner under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

