

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE

UD489/2009

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

EMPLOYEE and

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr D. Moore
Mr A. Butler

heard this appeal at Dublin on 12th October 2009

Representation:

Appellant(s) : Mr Vincent Nordell, 76 Kincora Road, Clontarf, Dublin 3

Respondent(s) : Karl Sherlock, Solicitors, Springfield House, Dublin Road,
Navan, Co. Meath

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-066097-ud-08/TB dated 16 January 2009).

Respondent's Case

DM told the Tribunal that he along with his father and the claimant worked in the respondent's barber shop. His father worked on Tuesdays and Saturdays. On 27 May 2008 his father was on holidays and the claimant reported late for work at 9.45a.m. and the claimant then went to lunch for one and three quarter hours. He told the claimant that he had to start work on time. The claimant told him that he could sack him and he told the claimant he was not going to do that. The claimant told him that if he sacked him he would open his own shop and take business from him. On 28 May 2008 he was going to give a letter to the claimant and the claimant arrived in work between 9.30a.m. and 9.40a.m. and he smelt of alcohol. He was cutting a client's hair at the time. If the claimant had valued his job he would have reported to work early. He had no option but to dismiss the claimant. He had to work on his own for two weeks until his father returned from

holidays. It took six weeks to replace the claimant. He gave the claimant the money that he was owed and his P45. The claimant established a business and this resulted in the respondent's business being reduced by forty per cent. The claimant had mentioned to him on a few occasions that he would establish his own business and take clients from the respondent. He dismissed the claimant for gross misconduct.

In cross-examination he stated that he had never given the claimant health and safety training and terms and conditions of employment. He did not give the claimant written warnings but he gave him verbal warnings. He told the claimant that the shop opened at 9.00am. and not at 9.45a.m. He had been friends with the claimant for many years. The claimant walked out of the shop and was hospitalised for twelve days due to drink. After the claimant was dismissed he found empty alcohol bottles on the respondent premises.

Claimant's Case

The claimant told the Tribunal that he was employed with the respondent as a hairdresser for twenty-one years. He was not given a written contract of employment. He earned €450 per week plus €60 to €70 in tips. He received no training on health and safety and he had an excellent relationship with customers. He stated that he was never inebriated while in work and he had an excellent relationship with his employer and they were friends for twenty-one years. His employer spoke to him on 27 May 2008 regarding his timekeeping. His employer DM told him that he had taken 1¼ hours for lunch. The claimant told DM that he had reported for work at 9:30a.m. for the last twenty one years. The claimant reported for work on 28 May 2008 and discovered that all of his memorabilia was removed off the wall. In a letter, which he received from his employer dated 27 May 2008, it mentioned money for holidays. The claimant left and he returned one hour later and DM told him that he was trespassing. He believed that he had received a letter from the respondent.

He established his own business in a nearby premises some days later. For the first three to four months' business was not good and his income was negligible. He never had a problem in work, he never had an accident in the shop and he was not a health hazard.

In cross-examination he stated that his drinking was not a problem, he was hospitalised due to an ulcer. He established a business three days later in a nearby premises the reason being that customers knew him. He stated that he may have had a hangover but he was never drunk.

In answer to questions from the Tribunal he stated that he was never given a starting time and he often worked until 6.30p.m. When he established his own business he had to borrow money from family and friends. He received a letter on 28 May 2008 regarding his timekeeping and he received a letter on 3 June 2008 which indicated gross misconduct.

Determination

The employer failed to implement any reasonable procedure in the dismissal of the claimant. Therefore the Tribunal decides that the claimant was unfairly dismissed and upholds the decision of the Rights Commissioner and awards the claimant compensation of €2,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

