

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYEE

CASE NO.  
UD549/2009

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

EMPLOYER

under

### **UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr P. Pierce  
Mr J. Maher

heard this appeal at Dublin on 26th November 2009

### **Representation:**

Appellant : Mr. Blazej Nowak, Polish Consultancy Enterprise, 19 Talbot Street, Dublin 1

Respondent : No representation listed

This case came before the Tribunal by way of an appeal against a Rights Commissioner's recommendation reference number r-066231-ud-08/TB

The determination of the Tribunal was as follows:

### **Respondent's Case (former employer)**

The respondent operated a modest sized furniture manufacturing and delivery service. Its factory manager emphasised the importance of quality in their finished products prior to delivery to its customers. He said that all mistakes made in the manufacture of its products were to be corrected internally. The witness accepted that such errors occurred but did not want those mistakes to be presented to the end user.

The witness had reason to address all the production staff in May 2008 reminding them that quality was required and to produce goods with that in mind. Some days later he again raised the same issue with the same employees. On that occasion he warned them that if their unacceptable work continued then he would have to dismiss the relevant people. He maintained that the appellant approached him subsequent to that announcement and offered to resign due to his mistakes in the performance of his duties as a cabinetmaker. The factory manager did not accept that offer and told

the claimant to return to work.

On 5 June this witness dismissed two employees including the appellant. He justified that dismissal on the grounds that the appellant allowed a drawer with several defects to be sent onwards for dispatch to a particular customer. Those defects resulted in a monetary and reputation loss to the company. The witness described in some detail the nature and circumstances of the appellant's input into those effects.

While labelling himself as not an unfair person the witness accepted that he neither gave a reason to the appellant for his dismissal nor offered him a right to appeal that decision.

A director of the company acknowledged that the respondent had to comply with all relevant employment legislation. However, he accepted that the company did not furnish the appellant with his terms and conditions of employment. In addition, the respondent had no procedures in place at the time for dealing with disciplinary issues.

This witness stated that in the three months prior to the claimant's dismissal he had noticed that the claimant's interest and standard of work had slipped. He had spoken to him about his performance and told him "to pull his socks up". The witness also gave an account of his involvement in the particular instance, which resulted in the claimant's dismissal. That dismissal was caused by the claimant's mistakes in not properly performing his work.

#### **Appellant's Case** (former employee)

The appellant accepted that in common with his former colleagues that the respondent discussed the standards and quality of work with them. He did not consider those talks as warnings and was never the subject of any disciplinary sanction prior to his dismissal. The witness denied that he offered to resign from the respondent at any stage. He detailed his involvement in the incident that led to his dismissal. That involvement did not amount to deliberate poor workmanship. Besides, the respondent was aware of the reported defects prior to the final finish of the product.

#### **Determination**

There was a noticeable conflict of evidence in this case. The respondent's case was that the appellant's work performance was so detrimental to their business that the only remedy was to dismiss him. The appellant's case was that he was the victim of an undeserved and wrong decision from the respondent.

Having carefully considered the evidence the Tribunal varies the recommendation of the Rights Commissioner and awards the appellant €3000.00 under the Unfair Dismissal Acts, 1967 to 2007. In this case the respondent had no written procedures to deal with this situation. It acted hastily, had no investigation, and did not exercise natural justice to the appellant.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)

