

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

UD552/2009

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

EMPLOYER

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. J. Reid

Ms M. Maher

heard this appeal at Dublin on 3rd February 2010

Representation:

Appellant:

O'Hanrahan Lally, Solicitors, Dublin Law Chambers, 77
Talbot Street, Dublin 1

Respondents:

Donal Branigan & Co, Solicitors, 5 Laurence Street,
Drogheda, Co. Louth

The determination of the Tribunal was as follows:-

This case came to the Tribunal by way of an appeal, by the employee, against the Rights Commissioner's recommendation r-068509-ud-08/JW.

Appellant's case

The appellant alleged that he was assaulted at work by a co-worker on 14th July 2008. He reported the incident to An Garda Siochana and to the respondent.

There was no action taken by An Garda Siochana against the person alleged to have committed the assault. There were no witnesses to the alleged assault.

The respondent told the appellant that the person accused of the assault was to be suspended from work. However when the appellant returned to work this person was still working on the premises. The appellant told the respondent that he could not continue to work in this situation and left the premises.

In relation to mitigation of loss the appellant stated that he was employed for two weeks in September 2008 and from 24th November 2008 to date. When asked about an affidavit signed by him the appellant stated that he was unable to work for seven weeks due to personal injuries.

Respondent's case

The respondent stated that there were long standing hostilities between the appellant and one of his co-workers. In an effort to prevent further agitation the respondent arranged for these individuals to work in separate areas of the premises.

However on the occasion of the alleged assault the appellant had entered the area to which the other employee had been assigned. There were no witnesses to the altercation and the respondent stated that the other employee alleged that he was the one that had been assaulted.

The respondent stated that he did not know whom to believe and confirmed that he had arranged to suspend the other employee but did not intend to do this until after this person had taken his shortly planned holidays. However he also stated that he intended to suspend the appellant at a later date but never got the opportunity to inform the appellant of this as he (the appellant) had left the employment. The respondent met with the appellant soon after the appellant had left and offered him work for a month during which time the "other employee" would not be there. However the appellant declined this offer.

Determination

Having considered the evidence the Tribunal finds that this appeal is well founded in part and that the appellant was constructively dismissed. The appellant's actual loss was approximately €4,000.00. In considering an award the Tribunal finds that the appellant contributed to his dismissal to a degree insofar as he did not engage in a process that may have resulted in his continued employment. Consequently bearing in mind his contribution to his dismissal the Tribunal awards the appellant the sum of €3,500.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

