

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYER *-appellant*

CASE NO.  
UD1408/2009

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

EMPLOYEE *-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms F. Crawford B.L.

Members: Mr G. Andrews  
Ms M. Finnerty

heard this appeal at Dublin on 10th June 2010

### **Representation:**

Appellant : Mr Andrew King B L instructed by  
Kelleher O' Doherty, Solicitors, Ushers Court, 31-33 Ushers Quay, Dublin 8

Respondent : Austin Heffernan & Co., Solicitors,  
20 /21 Quinsboro Road, Bray, Co. Wicklow

This hearing came before the Tribunal by way of an appeal against a Rights Commissioner's recommendation ref. no. r-065861-ud-08/DI.

The appellant (the company) stated that the company did not dismiss the respondent. It followed that since dismissal was in dispute that the former employee (respondent) presented his case first.

The determination of the Tribunal was as follows:

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

The respondent who worked as a spray painter and finisher of furniture products commenced employment with the appellant in early 1995. The appellant which was a modest sized furniture factory had an active proprietor who was frequently in attendance in and around the factory floor where the respondent performed his tasks. The former employee told the Tribunal that the proprietor had cross words with all staff at the respondent and indeed these two men had several quarrels during their working relationship. As a result of one such row in May 1996 the respondent absented himself from duties for around two months until he accepted an invitation to return to

work issued by the proprietor.

The witness described a heated verbal exchange he had with the proprietor on 12 December 2007 as an uncommon scenario compared with previous encounters. On that occasion the proprietor “got off his head and let roar” at him as he expressed displeasure at the way he had completed a particular task. The witness’s refusal to enter the proprietor’s office added an increased intensity to their ongoing exchange of expletives. As part of this undiplomatic and abusive exchange the witness said he heard the proprietor tell him *inter alia* to “get the fuck out of my factory”. The witness duly complied with that instruction and removed his working clothes and vacated the premises. Despite their many sprats in the past this was the first time the respondent was actually told to leave.

Due to the choice of language, its context, form of delivery and tone the witness felt he had been dismissed. That impression was compounded and confirmed when the company, particularly its proprietor, did not contact him subsequent to that verbal altercation. The witness reasoned that had the proprietor not meant what he said then he would have contacted him as he did on a previous occasion, with a view of getting him back to work. The respondent did not receive any notification of dismissal and in January 2008 sought his P45. In March 2008 he received a reference from his former employer.

A further witness and former employee of the company referred to events subsequent to the respondent’s cessation of employment.

### **Appellant’s Case (former employer)**

In his reference dated 19 February 2009 about the respondent the proprietor wrote:

*During his time with the company we found X (the former employee) to be a very diligent worker who paid great attention to the finer detail of our business. X got on very well with both management and staff, and was a great team player.*

He told the Tribunal that the respondent had been a good employee who over time had arguments with other co-workers including himself. The witness compared his relationship with the respondent like that of an old married couple. At times they exchanged cross words consisting in part of “industrial language”. He also referred to an argument they had in 1996 when the respondent left the workplace for several weeks. The witness acting on the advice of his spouse finally contacted him that led to a rapprochement of sorts between them.

It emerged during the proprietor’s evidence that the company did not have any procedures in place in dealing with staff issues. The method used was “just to sort out situations” when they arose.

On 12 December 2007 the witness noticed that the work carried out by the respondent was not up to the standard needed to send it to a customer. When he told the respondent that and asked him to enter his office an increasingly unpleasant and verbally heated dialogue ensued between these two gentlemen. A lot of the language was peppered with four lettered words rhyming with duck. The witness felt he was being abused in front of some of the staff and became progressively annoyed at the behaviour and attitude of the respondent. Among the final exchanges the witness accepted he told the respondent not to tell him to fuck off in front of staff. He then proceeded to tell the respondent to fuck off. The respondent then pulled off his overalls and left the factory.

The witness told the Tribunal that he certainly did not dismiss the respondent in that exchange. He expected to see him later that day back at work or at least the following day. Had that happened work and the relationship between them “would have continued as normal”. Since the witness felt that the respondent had “walked out” it was up to him to come back as the proprietor felt he had done nothing wrong. Besides it would have “been weak to run after him” as it would have given the message that the respondent could have returned on his rather than the company’s terms. In the meantime the company had orders to complete and steps were taken to acquire the services of another sprayer.

The witness reinforced his own view that the respondent had abandoned his employment when he received a letter from social welfare on this matter and when the respondent asked for his P45. That view also went unchallenged when the proprietor wrote in the respondent’s reference that the respondent had decided to terminate his employment.

Three other witnesses gave brief evidence that broadly supported the proprietor’s version and interpretation of events.

### **Determination**

Neither the appellant nor respondent emerge from this case with much credit. This is a case where rage and profanities triumphed over reason and procedures. Indeed this is an example to both employers and employees on how not to behave in the workplace. The scene as portrayed to the Tribunal paints a picture of two grown men behaving in a very juvenile way. The result was a lose-lose situation. The employer lost, by their own admission, a good diligent worker and the employee lost his job.

Having carefully considered this case the Tribunal finds on balance that the proprietor acting on the company’s behalf did indeed cause and contribute to the respondent termination of employment. Two major instances happened in this case. Firstly, there was the heated verbal exchange between the proprietor and his sprayer. Perhaps at that time when the proprietor impolitely told the respondent what to do with himself he did not mean or intend to terminate his employment. His reaction to the respondent’s clear provocation was too immediate and forceful and adversely contributed to this already volatile situation. The context and atmosphere has to be taken into account as does the history and relationship between these men.

The second instance or more accurately non-instance was the proprietor’s subsequent non-engagement with the respondent following that incident on 12 December 2007. This was in contrast to an earlier reported incident albeit over a decade earlier. This strongly suggests the proprietor was not unduly concerned to see the back of this troublesome employee. That passive response together with any lack of proper procedures in dealing with a situation like this reflects badly on the company.

In upholding the original recommendation of the Rights Commissioner in this case the Tribunal

dismisses the appeal under the Unfair Dismissals Acts, 1967 to 2005 and reaffirms the award of €14, 893.00 to the former employee under the above Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sad.) \_\_\_\_\_  
(CHAIRMAN)

