

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – appellant

CASE NO.
UD1292/2009

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

EMPLOYEE
V
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 G Mc Auliffe
Mr P Woods

heard this appeal at Dublin on 2nd June 2010

Representation:

Appellant(s): In person

Respondent(s): In person

The determination of the Tribunal was as follows:

The case came before the Tribunal by way of an employee appealing the recommendation of a Rights Commissioner ref: (r-065470-ud-08/MMG).

Respondent's Case:

The respondent company is a community based drug rehabilitation centre in Dublin 17. The first respondent witness is a voluntary worker and is the Chairman of the Board of Management. It was up to him to ratify the decision of the sub-group that made the recommendation to dismiss the appellant. He told the appellant to write to the board and to go through the procedures if she wanted to appeal.

During cross-examination the witness explained that clients are mostly from the Dublin 17 but some may have moved from the area and continued attending to the clinic. Clients are referred through the Health Service Executive and the methadone clinic next door.

The second witness, the manager at the clinic, gave evidence that the centre trains people in areas such as horticulture and cookery. The witness designs the therapies for all of the clients and meets each client when they come to the centre. The appellant worked in the kitchen on a community employment scheme.

The issues that arose with the appellant were in relation to confidentiality and socialising with clients. When staff commence with the centre they sign a confidentiality agreement. They are asked if they know anyone coming to the centre. It is important to keep a separation between staff and clients. The appellant signed the confidentiality agreement and the document in relation to socialising. The witness should have been told that the appellant was the neighbour of one of the clients.

The witness was told by a third party that she had had a fight with another client, on Friday 25th April 2008, as the client had gone to the appellant's house and smoked cannabis and drank alcohol. The third party alleged that a breach of confidentiality had taken place. The witness explained that taking alcohol while taking methadone is considered drug abuse as mixing the two could have considerable ill effects.

The witness asked the appellant to come to an investigatory session. She refused to bring anyone with her. The appellant confirmed that the client had been drinking in her house but denied that she had been taking drugs. The witness dismissed the appellant by letter of April 28th 2008 for breach of the confidentiality agreement. The dismissal was effective from May 9th 2008.

The appellant was informed verbally that she could appeal and about the grievance procedure. The appellant wrote to the Board on May 7th 2008 to request all the documentation regarding her dismissal and to seek a copy of the grievance and disciplinary procedures. She stated that she felt unfairly treated. The Chairman replied, by letter of May 22nd 2008, that the appellant could view the documents onsite but if she wished to take the documents offsite she would have to sign a waiver, in accordance with their confidentiality policy. He stated that the appellant could appeal the decision as stated at the exit interview. He stated that the appellant could bring a representative to any meeting. There was no further correspondence from the appellant. The grievance procedure was enclosed with her P45 sent on June 11th 2008.

To help the appellant the witness contacted Fás to see if there was another scheme she could join in the area, which did not entail such strict procedures. Fás agreed to help move the appellant to another scheme. He continued to pay the appellant for another two weeks so that she could move without a break. The appellant never followed up on moving to another scheme.

Appellant's Case:

The appellant gave evidence that there were four clients living on her road. The appellant agreed that a client had come to her house. The appellant was socialising with friends in her garden. The client was a friend of her daughter's who had died the year before. The client started to smoke cannabis but the appellant told her to stop. A friend gave the client a drink. The client said that she didn't like one of the other clients at the centre. The client then went to the centre and told people that she had been in the appellant's house.

The manager called her into his office and told her that she was dismissed and that she was to leave

immediately. She contended that she had asked the client to leave her garden and that she was not responsible for a thirty year old woman.

She enjoyed her job, but had difficulties with the manager.

She agreed that she received the letter of May 22nd 2008. It was not replied to, to her knowledge. She contacted a legal aid solicitor. She did not know why she did not appeal her dismissal. She filled in the forms for the Rights Commissioner as instructed by her solicitor.

The appellant gave evidence of her loss.

Determination:

Having heard all the evidence adduced the Tribunal upholds the recommendation of the Rights Commissioner ref: and awards the appellant €500.00 (five-hundred euro) under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)