

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

CASE NO.
UD850/2008

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: Mr J Flanagan BL

Members: Mr F Moloney
Ms M Finnerty

heard this appeal in Dublin on 17th November 2008

Representation:

Appellant: Mr Dick Hurley, Union Of Sheet Metal Workers, 6 Gardiner Row, Dublin 1

Respondent: No attendance or representation at the 17th November 2008 hearing

The determination of the Tribunal was as follows: -

Determination:

This case came to the Tribunal by way of appeal by the employee against Rights Commissioner Recommendation r-057339-ud-07/JT after neither employee nor employer had attended at the Labour Relations Commission on 23rd May 2008.

At the beginning of the Tribunal hearing, the appellant's representative told the Tribunal that, on the day the appellant had due to attend the Rights Commissioner hearing, the appellant had been away and his representative had been fairly seriously ill.

The appellant's representative told the Tribunal that he had rung the respondent who had said that he would not be appearing at the Tribunal on 17th November 2008. The representative explained that the appellant had been working for a private individual who had traded under a business name.

The Tribunal was told that there were no payslips. The appellant stated that he had received a P60 but that he did not have it with him. The appellant said that he had no other documentary proof of employment by the respondent with him but that he had been sent a P45 when he was let go.

The appellant's representative gave an address for the respondent but the Tribunal pointed out that the appeal form to the Tribunal referred to a different number on the same road. The appellant stated that one number was of the house where the respondent's mother had previously resided.

The appellant's representative said that he had spoken to the respondent on the Friday prior to this hearing and gave a telephone number for the respondent. He said that one of those addresses was now set in apartments.

The respondent had sent a letter to the Tribunal alleging that the appellant had terminated his own employment by going on holidays without leave and this matter was put to the appellant by the Tribunal for clarification. The appellant replied that this had not occurred and that instead he had been unfairly dismissed.

The appellant's representative said that he had asked the appellant to bring P60 and P45 documents with him to the hearing and that the appellant's colleagues had earned €20 per hour.

Asked why there was no claim for minimum notice, the appellant's representative said that the appellant had been put on lay-off. The appellant added that he had been "sick with mental health" until September when he "was fit to go back" but that, when he told the respondent, the respondent said that there was no need and basically said that there was no work.

The appellant said: "I was out for four weeks sick and got two weeks' holiday pay. The doctor gave me a note for four weeks sick. I was made to take two weeks sick. I was suspended for one week because I never gave enough notice for going sick. The illness was depression."

The appellant's representative submitted that the appellant had been dismissed on 8th August 2007. The appellant said: "It was September. We had a meeting. A couple of days later I got a 'phone call after I had rung him (the respondent). He said he was shutting up shop. He did not shut up shop. He is still operating. A very close family member still works for him. I did ducts and sheet metal. I don't know if I was replaced. At least nine people work for him."

When the appellant was asked if the respondent now had fewer employees he was not able to answer that on the spot. He said that he had not got other work, that it was "very hard to get income in" and that he had been receiving jobseeker's benefit.

The appellant's representative told the Tribunal that the appellant was claiming unfair dismissal, that it was usually "last-in, first-out" when there was a downturn in the industry and that he had rung the respondent who had said that he had ceased trading. However, the appellant's representative said that the respondent had not ceased trading.

The appellant told the Tribunal that in April 2007 the tax authorities told him that no tax had been paid for him since 2005 and that the tax authorities had thought that he had been working abroad.

Asked if the respondent had assets, the appellant said that the respondent had the house of his late mother and that he (the appellant) thought that the respondent also had a villa in Spain.

Asked if the respondent still employed men in Ireland, the appellant replied that, as far as he knew, the respondent still did.

Regarding what type of employment the appellant had sought after his employment with the respondent, the appellant said that he had looked for sheet metal work in the building trade and that he had looked for labouring but had got nothing despite asking around. He admitted that he had not looked outside the building industry.

The appellant said that he did not have copies of rejections from employers and that his efforts had been mainly over the telephone. Asked if he had applied for advertised jobs, he said that he had not but that he had “got the yellow pages out” and had rung around. Asked if he was saying that he had made no application to advertisements, he replied that there had been none in his trade. Asked how many jobs he had applied for, he replied: “Fifteen at least.”

Determination:

There was no attendance by the respondent at either the hearing before the Rights Commissioner or at the hearing before this division of the Tribunal. Therefore the Tribunal has given particular consideration to the issue of service. [For the purposes of publication alphanumeric combinations are substituted for names and addresses in order to preserve confidentiality.]

The secretary to this division of the Tribunal carried out a search at the Companies Registration Office on 17th November 2008 and found that the trading name used in this order is a business name with the registered office given as [number A1], [street name A2], [townsland A3], [city A4] and with the business name owner given as the name of the respondent of the same address. Theregistration type was given as the registration of a business name – individual. Registration of thisbusiness name was received/registered and effective as of August 2002. The Tribunal uses this address first in this order.

The Rights Commissioners Service wrote to “Mr [the respondent’s name], [the respondent’s name] Services, T/A “[the respondent’s name], Sole Trader, [number B1] [street name B2], [townsland B3], [city A4]” on 1st February 2008.

The Labour Relations Commissioner wrote on 18th April 2008 to Mr [the respondent’s name] Mach, at [number B1] [street name B2], [townsland B3], [city A4] notifying the respondent of the time, date and venue of the hearing before the Rights Commissioner. The Tribunal uses this address second in this order.

The Tribunal notes that in the recommendation of the Rights Commissioner the name of the employer is given as “[the respondent’s name] Mach” and not “[the respondent’s name] Mech” as previously.

The recommendation of the Rights Commissioner is given in a single sentence, which is as follows: “Due to the unexplained absence of the claimant and the respondent the claim falls for lack of prosecution.”

The matter came before the Tribunal by way of an appeal from the recommendation of the Rights Commissioner using Form T1B. The respondent’s name and address was also given as XXXX Mach, but now with an address at as [number C1], [street name A2], [townsland A3], [city A4] and not A1 as previously and this was the name and address used by the secretariat to the Tribunal for the purposes of its initial correspondence. At a later stage the Tribunal received correspondence in which the address was corrected to [number B1] [street name B2], [townsland B3], [city A4] and

the secretariat to the Tribunal used that address for the purposes of correspondence. It appears that the respondent had made this correction. The Tribunal uses this address second in this order.

The secretariat to the Tribunal received an undated letter from the respondent on 4th November 2008 stating; “Due to work and financial circumstances I am unable to attend the hearing or pay for a representative and request you to present our documents.” Amongst these four documents is a document from the Revenue Commissioners referring to “[the respondent’s name] Services, [number A1], [street name A2], [townsland A3], [city A4].” A second document from the Revenue Commissioners refers to Mr [the respondent’s name], [number A1], [street name A2 misspelled], [townsland A3], [city A4]” [note townsland C3 and not A3]. Both of the Revenue documents have the same tax reference number. A third document is headed “[the respondent’s name] Mechanical Services t/a [the respondent’s name]” whilst the fourth document is headed “[the respondent’s name] Mechanical Services” and both use the address found at the Companies Registration Office which is used first in this order. The Tribunal is satisfied from reading the documents before it that the respondent was on notice of this hearing and indeed of the hearing before the Rights Commissioner.

The Tribunal finds that the respondent had employed the appellant and that this employment had terminated and this finding is supported by the documents furnished by the respondent.

On the uncontroverted evidence of the appellant, the Tribunal allows the claim under the Unfair Dismissals Acts, 1977 to 2007, and awards the appellant compensation in the sum of €23,400.00 (this amount being equivalent to thirty weeks’ gross pay at €780.00 per week).

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)