

## **EMPLOYMENT APPEALS TRIBUNAL**

APPEAL OF:  
EMPLOYEE

CASE NO.  
UD1560/2009

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: Mrs. M. Quinlan

Members: Mr P. Pierce  
Mr A. Butler

heard this appeal at Dublin on 26th August 2010

### **Representation:**

Appellant : Mr Brendan McDonald, Coughlan & Co, Solicitors,  
Moorefield Road, Newbridge, Co Kildare

Respondent : No representation listed

This hearing came before the Tribunal by way of an appeal by a former employee named above against a recommendation of a Rights Commissioner ref. no. r-074206-ud-09-TB

The determination of the Tribunal was as follows:

### **Appellant's Case**

The appellant commenced employment with this family run firm in November 2006. In working as a general operative in its warehouse he undertook tasks relating to the processing and despatch of orders. While employed there he acquired a licence to drive a forklift vehicle and secured a certificate in First-Aid. He told the Tribunal that he enjoyed working at the respondent's "up to a point". However, he also stated that he never received either a written statement of his terms and conditions of employment nor a contract of employment. Up to the time of his termination of employment the appellant had never been issued with any warnings nor invited to disciplinary hearings.

By early 2008 this former employee had been approached by management in relation to his work performance particularly his time keeping. He described those approaches as very informal but did acknowledge that he had reported late for work on a number of occasions. He also accepted that his

behaviour towards leave during a week in March 2008 was not in compliance with the respondent's policy about staff holidays. In early June 2008 the appellant sustained injuries in a non-work related incident. That led to the respondent arranging transport for him to a hospital for treatment. Due to the potential costs involved the appellant did not present himself for such treatment. His injuries finally resulted in the issuing of medical certificates which certified him fit to return to work on 7 July 2008. In the course of communicating with the respondent the appellant heard the warehouse manager tell him that those medical certificates could be submitted in "one go" when he returned to work.

When the appellant reported for work in early July he was asked to attend a meeting with some management personnel. The nature and circumstances of that meeting was not communicated to him. At that meeting he was informed that there was no longer any work for him and that therefore his employment had come to an end with the respondent. That was the first time he which he heard that news.

Despite thinking that a request to attend a meeting with the respondent was unusual the claimant's mother met with management in late June 2008. Those managers expressed concern at her son's health and well-being highlighting his eating habits and record of lateness. The mother said she was led to believe that the appellant had a future with the company.

### **Respondent's Case**

In acknowledging that no contract or terms and conditions of employment issued to the appellant the managing director stated all agreements with staff were oral based only. This was a small company, which cared for its employees and that adapted "a common sense" approach to disciplinary matters. This witness was not aware of any sick certificate arrangements between his fellow managers and the appellant. He was in attendance at a company emergency management meeting when it was decided to discontinue with the employment of the appellant. Part of the minutes of that meeting read as follows in connection with the appellant: *...his behaviour was totally unacceptable, no communication had been given despite a number of attempts to contract (the appellant) in relation to sick certs, following a number of warnings and a number of commitments to improve his overall performance, following an unsatisfactory meeting with (the appellant's) mother in which she felt there was no problem with the (the appellant's) behaviour, it was decided that we could not continue to keep (the appellant) in employment.*

The contemporary warehouse manager and supervisor of the appellant commented that up to January 2008 the appellant was a good employee who was always willing to help out. From that time onwards he spoke to the appellant several times about his work performance, which centred on his lateness. At no time was the appellant disciplined or penalised for his deteriorating work rate. While he had no recall of telling the appellant that he could present all his combined sick certificates upon his return to work in July 2008 the witness remembered asking him to have those certificates submitted as soon as possible. This manager attended the emergency management meeting and was also present when his colleague informed the appellant that his employment was now ceasing with respondent. The reasons given for that decision was the downturn in business and his continuing poor performance.

## **Determination**

Having heard and considered the evidence in this case the Tribunal reaffirms the recommendation of the Rights Commissioner. While the appellant's performance was less than perfect it pales in comparison to that of the respondent. The respondent's lack of procedures in dealing with the appellant was the main contributing factor in concluding this was an unfair dismissal.

Accordingly, the appeal under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the Tribunal finds that the original award of €4000.00 is a just and equitable remedy in this case.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

