

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYER

CASE NO.
UD750/2009

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

EMPLOYEE

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr G. Hanlon

Members: Ms A. Gaule
Mr C. Ryan

heard this appeal at Dublin on 20th May 2010

Representation:

Appellant: In Person

Respondent: Mr. Tom Faulkner, Ucatt, Ucatt House, 56 Parnell Square West, Dublin 1

This case came before the Tribunal as a result of an appeal by an employer (“the company”) against the Recommendation of the Rights Commissioner ref: r-064095-ud-08/JT in the case of an employee, JC (“the employee”)

At the outset of the hearing the Tribunal heard that the parties involved did not agree on the date of commencement of the employee’s employment with the company. This issue was later resolved with reference to the employee’s contract which stated the date of commencement as 4th September 2007.

The determination of the Tribunal was as follows:-

Company’s Case

The Tribunal heard evidence from PV, the commercial director / business developer of the company. The company is an agency which supplies labour to the construction industry. He told the Tribunal that at the time of the employee’s employment the company operated two offices, one in Dublin and one in Galway. The Dublin office is no longer in operation.

PV told the Tribunal that he commenced employment with the company in September 2009 and was not working for the company at the time of the employee's dismissal, in March 2008. His knowledge of the employee's case is based on the nature of the industry, which determines when people are hired and fired.

PV told the Tribunal that the employee was not dismissed for trade union activity because the company was not aware that he was a member of a union until November 2008.

PV told the Tribunal that in March 2008 the employee was working on a site in Dominic Street. This site was beginning to wind down and the employee was the second or third last employee to be let go. The work on the site in Dominic Street was completed by the end of May or early June and at this stage the company's Dublin office ceased to operate.

Under cross examination PV told the Tribunal that the employee was given one weeks notice in line with his contract and this was followed up by a letter of written notice.

Employee's case

During direct evidence, the employee told the Tribunal that he went in to work on 31st March 2008 and was met by BS, from the company and TF, the foreman on site with the main contractor, and was informed that his employment with the company was finished. This was the Monday after the Easter Holidays.

On the Thursday before Easter, the employee had a conversation with CC, who asked him why the lads were sitting down. The employee replied "*it's nothing to do with me, I'm only a carpenter*". The employee told the Tribunal that there were major problems on the site in Dominic Street in relation to safety and pay. At Christmas time in 2007 they did not receive payment for holidays and when he raised the issue with the company he was told that they were not getting payment for holidays. There was also an issue with pension deductions not being submitted to the pension provider. The employee brought this to the attention of the union and they contacted the pension provider.

The employee said that he contacted the union on a weekly basis in relation to the issues because he was the contact on the site. The employee told the Tribunal that the company knew he was in touch with the union. The employee told the Tribunal that it was his opinion that he was dismissed for being involved in the union because "*he was the thorn in the company's side and every week there was an issue about rates*".

The employee told the Tribunal that he did not receive any notice from the company, written or verbal.

Under cross examination the employee agreed that holiday pay in respect of Christmas 2007 was paid after Christmas. The employee was also shown a letter of compliance from the pension provider but he felt this was only provided to the company after they paid outstanding monies. The employee also accepted that work on the site in Dominic Street was winding down and would probably come to an end within three to five months.

Determination:

The Tribunal is satisfied that based on the evidence heard, the company was aware that the employee was acting in a representative capacity for union members and that this was a factor in the decision to terminate his employment on 31st March 2008. In light of the fact that termination of his employment was imminent, irrespective of any trade union activities, the Tribunal varies the award of the Rights Commissioner ref: r-064095-ud-08/JT. Accordingly the Tribunal awards the employee €1,800 under the Unfair Dismissals Acts, 1977 – 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

