

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE - *appellant*

UD1493/2009

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

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms O. Madden B.L.

Members: Ms A. Gaule
Mr J. Flannery

heard this appeal at Dublin on 13th July 2010
and 26th November 2010

Representation:

Appellant(s) : Mr. John Hubbard, Assistant Branch Secretary, SIPTU,
George's Street, Newbridge, Co Kildare

Respondent(s) : Ms. Muireann McEnery, Peninsula Business Services (Ireland)
Limited, Unit 3 Ground Floor, Block S, East Point Business
Park, Dublin 3

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an appeal by an employee against the recommendation of a Rights Commissioner under the Unfair Dismissals Acts 1977 to 2007 ref r-073850-ud-08.

Appellant's Case

The appellant gave direct evidence that he commenced working for the respondent company in Ireland in July 2003. The respondent operates as a Kentucky Fried Chicken outlet. He had previously worked for the respondent as an assistant manager in South Africa. He secured work in Ireland through an agency in South Africa and paid €750 to the agency in 2003, 2004 and 2005 for his work permit. He received training in customer procedures and policies and procedures

n relation to clocking in and out when he worked in South Africa. Whilst he received some training in Ireland in relation to policies and procedures he received no training in relation to the clocking in and clocking out procedures. He did not receive a company handbook when he started work in 2003.

He worked in a number of outlets in Ireland and also worked in an outlet in Northern Ireland even though his work permit did not allow him to work in Northern Ireland. He raised this issue with his manager but was told to just go ahead and work in the outlet in Northern Ireland. He was promoted to the position of manager and was appointed to an outlet in Dublin. He received no further training following his promotion to manager. He told the Tribunal that on one occasion he reported and clocked in for work at 8am. He realized he had forgotten his uniform and contacted a colleague to cover for him in order for him to return home to collect his uniform. He thought his absence would only be for 10 minutes but his journey took somewhat longer and he was absent for more than 2 hours. He did not clock out during this absence and did not realize his actions were wrong.

He told the Tribunal that he had previously raised issues concerning not being trained properly with his area manager but no further training was offered to him. He attended a disciplinary meeting on 3 September 2008 whereby it was alleged that he had falsified company training records and had not been following the correct company procedures in relation to clocking in and clocking out. He told the Tribunal that he was not given a fair opportunity to have a representative with him at that meeting and he was not given enough time to study documentation presented to him by the company. He told the Tribunal that the company re-trained employees after his dismissal but he was never afforded that opportunity.

Under cross examination he confirmed that he was happy with the training procedures he had received while working with the company in South Africa. He denied that he received training in Ireland in accordance with what is shown on company training records. He accepted that it was his responsibility to train his staff and he did so. The company results showed that he was a good employee and a good manager. He was familiar with audits as part of the company's evaluation process and he always received good evaluations. He accepted that he handed over company records to the auditors to enable evaluations to be carried out. He told the Tribunal that he was prepared to listen at the disciplinary meeting on 3 September 2008 but not prepared to give answers. In response to a suggestion that he replied no when he was asked at a meeting on 8 May 2007 if he felt he required any extra training, he replied that he raised training issues with his area manager.

Respondent's Case

The respondent's position was that the appellant was employed as an assistant manager and latterly as a store manager from July 2003 until September 2008. The appellant was a good manager, managing a successful store with a team that worked well in a happy environment. The respondent submitted that the entire store team had received the necessary training in order for it to operate as a successful store. Indeed it would not have been possible for the store to operate so successfully if the employees had not received the required training. Auditors visited the store on a regular basis and the appellant, as store manager, provided the auditors with documentary records in relation to training and procedures that pertained in the store. All the indications from the auditors to the company were that the appellant was operating as a good manager. The appellant also provided training records of employees to environmental health officers who visited the store.

In July 2008 it came to the respondent's attention that the appellant had left the store for over 2

hours and remained clocked in for duty. The respondent commenced an investigation into this incident and during the course of the investigation the appellant stated that he did not fully understand the procedures in relation to clocking in and out for work. He stated that he had not been properly trained in relation to these procedures. He also stated that his signature which appeared on training records was forged by a former employee, who has since left the company. It is the respondent's position that the appellant had knowingly been in possession of these falsified records for 5 years and had never brought this to the attention of senior management in the company. In addition, the appellant, as restaurant manager was responsible for various aspects of employees training. It was vital that he himself had been properly trained for him to be able to carry out that training. The respondent further submitted that the appellant admitted during the course of the investigation that he had not read or fully understood the company handbook and had only signed training declarations because his superiors at the time had told him to do so. By signing these records the appellant had falsified company training records as, by his own admission he had not read, understood or even received the relevant training required as per company policy. The respondent submitted that the appellant had put the company at risk by providing these records to environmental health officers and the company's auditor. These actions amounted to gross misconduct and as a result the appellant was dismissed.

The respondent contended that it followed fair procedures at all times. The company carried out a thorough investigation followed by a disciplinary hearing and later an appeal hearing. The appellant was afforded the opportunity of having representation at the hearings. The respondent notified the appellant by way of letter dated 27 August 2008, sent to his Dublin address of the proposed disciplinary hearing scheduled for 1 September 2008 in its Belfast headquarters. This meeting did not proceed as scheduled and ultimately took place on 3 September 2008. The respondent submitted that the notice given to the appellant of this meeting was adequate.

Determination

The Tribunal carefully considered the oral and documentary evidence adduced at the hearing by both parties. The Tribunal is satisfied that the appellant was unfairly dismissed insofar as the procedures followed by the respondent with regard to the time allowed for the appellant to prepare his defence and arrange for representation at the disciplinary hearing held on 3 September 2008 was insufficient. The Tribunal also notes that the said disciplinary hearing was held in Belfast while the appellant's place of work was in Dublin. Notwithstanding the above the Tribunal is also satisfied that the appellant's conduct contributed greatly to his dismissal.

Therefore in allowing the appeal the Tribunal upsets the recommendation of the Rights Commissioner and awards the appellant compensation in the sum of €9984.00 under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

