

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYER

CASE NO.
UD1214/2009

-appellant

against

EMPLOYEE

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms F. Crawford B.L.

Members: Mr D. Peakin
Mr N. Dowling

heard this claim in Dublin on 5th May 2010

Representation:

Appellant: Ms MP Guinness BL instructed by Mr. Peter Tunney
Solicitor, Kevin Tunney Solicitors Millennium House Main Street
Tallaght Dublin 24

Respondent: In Person

Background:

This case is before the Tribunal by way of an employer appealing the Recommendation of a Rights Commissioner Ref:(r-069929-ud-08MMG). The employer is the appellant and the employee the respondent. The employee was employed by the employer as an interpreter or translator of languages.

Dismissal is in dispute in this case and accordingly the employee is first to give evidence to the Tribunal.

Employee's case:

The employee gave evidence to the Tribunal that he was dismissed because of an ongoing dispute that he had with his employer over unpaid or tardily paid wages. A document was opened to the Tribunal outlining the wage dispute. His employer phoned him and threatened him. On 21st March it was "sudden death" and his employer did not call him again. He believed that he was dismissed "through the grape vine". He explained, "I don't think that anyone could blame me for asking formy wages and because I threatened them with the Labour Court".

The employee gave evidence as to his loss.

In cross-examination the employee denied that he received a copy of the company

code of practice. It was put to the employee that his pay was delayed as he refused to fill in a form and he replied that he returned his tax forms on time and had letters to prove that. It was put to him that the reason he did not get paid was that he did not give a tax certificate and he replied that he was offered work in January February and March and that he sent his certificate long before his money was due to be paid to him.

The employee was asked by the Tribunal about the dispute in payments and he explained that not a single month went by without a struggle to get paid, and that there was always a dispute and he had witnesses to call.

The Tribunal heard evidence from a witness who was a co-ordinator and sometimes accountant with the employer. Because of the dispute that the employee and employer had he was told by the owner not to call the employee for jobs.

Another witness gave evidence that he was told to stop using the employee as an interpreter.

Employer's case:

The Tribunal heard evidence from the owner. He explained that up to 2007 all of the interpreters were independent contractors. Following a Revenue audit they were given a severe direction that all of the interpreters be treated as employees. They notified the interpreters of this and put the appropriate tax form on their web site. He notified all of the office staff. One of the office staff gave a tax form to the respondent employee and he never returned the completed form.

He did not say that the respondent employee was dismissed. He just instructed that they stop using him as an interpreter. He did this, as they had to sort out the tax situation. They could not work out the employee's tax. They could not continue with the situation. He did not say that the employee was dismissed he just said to stop using him until they got tax form. In January they told all of the employees about the tax forms.

The Tribunal asked the witness if he had any document to prove that they gave the code of practice to the respondent employee and he explained that he had none as they moved office. He was asked if he sent out a letter to the interpreters to say that if they did not fill in the certificate then there would be no more leeway. He replied that he did not send out such a letter, but the receptionist told the employee over the phone.

The Tribunal heard evidence from the receptionist who explained that after January 2008 a direction was given that all the interpreters had to be tax compliant. He had all the forms available in the office and the codes of practice. Also the forms were on the website. The respondent employee did not return the form or send them in. Sometime in March 2008 the operations manageress told them not to book the respondent employee if he did not send in the forms.

The Tribunal heard evidence from an interpreter who explained that they were told in January 2008 that they had to fill in a tax form in order to be called for further bookings. He also got a code of practice document.

Determination:

The Tribunal unanimously determines that the employee was unfairly dismissed. There were no fair procedures used in this case. The Tribunal determines that compensation be the most appropriate remedy in this case. Accordingly the Tribunal vary the Rights Commissioner decision Ref:(r-069929-ud-08MMG), UD1214/2009 and awards the employee the sum of €7,000.00, as compensation under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)