

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER

UD1638/2009

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. T. Ryan
Members: Mr. D. Peakin
Ms. E. Brezina

heard this appeal at Dublin on 9th September 2010 and 11th January 2011

Representation:

Appellant:

Actons, Solicitors, Newmount House, 22-24 Mount Street Lower, Dublin 2

Respondent:

Ms. Karen Smollen, SIPTU, Contract Services Branch, Liberty Hall, Dublin 1

The determination of the Tribunal was as follows:-

This appeal came to the Tribunal by way of an appeal by the employer against the decision of the Rights Commissioner r-073603-ud-08/RG.

Appellant's case (employer)

The appellant stated that the respondent was employed as a security officer. The respondent worked on shifts that changed between night and day shifts on alternate weeks. There was some scope for changing rostered shifts but only with the prior consent of a supervisor. However the respondent switched shifts with a colleague without authorisation and signed the work sheets as though he had worked the shifts he was assigned to.

This led to the respondent working a straight 24 hours and according to the appellant this is illegal and could have had insurance implications for the company. Furthermore the appellant relies on work sheets when billing customers and if these sheets are not correct it could lead to customers

being dissatisfied and going elsewhere.

The appellant held a disciplinary meeting with the respondent and informed him of his dismissal. The respondent then appealed this decision. The person who heard the appeal stated that during the course of the appeal she told the respondent and his union representative that she was upholding the decision to dismiss. However she understood that both parties wished to discuss the possibility of alternative employment and therefore stepped back to allow for such discussions. These discussions did not lead to the respondent being redeployed and he was ultimately dismissed.

Respondent's case (employee)

The respondent stated that he had phoned the office and spoke to someone he believed to be a supervisor and asked for permission to switch shifts with a colleague. However the supervisor in question informed the Tribunal that he had received no such phone call and that if he was asked to give permission he would not have done so as this would have meant the respondent working 24 hours straight.

Notwithstanding this the respondent stated that he had switched shifts before without prior approval and nobody seemed to mind. He said that on the first occasion he asked his supervisor and was told it was OK as long as the shift was covered. The respondent also said that he was never specifically told that he must get prior approval for every shift change.

The respondent did not change the worksheets to reflect the interchanging of shifts between him and his colleague, as he did not wish to confuse the payroll staff.

Determination

Having considered the evidence adduced the Tribunal finds that the procedures followed by the appellant in dismissing the respondent were flawed and that the respondent was unfairly dismissed. However the respondent should not have changed the rosters or the work sheets. Nor should he have swapped shifts with his colleague without prior approval of the supervisor.

Accordingly the Tribunal varies the decision of the Rights Commissioner r-073603-ud-08/RG and awards the respondent €2,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

