

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

UD2572/2009

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: Ms. F. Crawford B.L.

Members: Mr. F. Cunneen
Mr. S. O'Donnell

heard this appeal at Dublin on 10th September 2010 and 6th January 2011 and 7th January 2011

Representation:

Appellant:

Mr James Finnegan, Civil Aviation Branch, SIPTU, Corballis Park, Dublin Airport

Respondents:

Mr. David Farrell, IR/HR Executive, IBEC,
Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

This case came to the Tribunal by way of an appeal by the employee against the decision of the Rights Commissioner r-068928-ud-08/DI.

Respondent's case (the employer)

The respondent stated that the appellant was employed as a lead agent and as such was a team leader with responsibility for the health and safety of his team and aircraft crew and passengers.

On the 13th July 2008 the appellant failed to ensure that a stand to which he was assigned was clear before allowing an aircraft to come to that stand. This resulted in the health and safety off all those

involved being compromised and the wing of a plane being damaged. This was deemed to be gross misconduct as defined in the respondent's disciplinary procedure. An investigation was carried out and a disciplinary meeting was held whereby the claimant was dismissed. The dismissal was appealed in accordance with the disciplinary procedure and this appeal was duly considered. However the decision to dismiss was upheld and the appellant was dismissed.

Other members of the appellant's team were also disciplined to varying degrees up to and including one other dismissal.

Appellant's case

The appellant agreed that procedures were followed as per the company's disciplinary procedures and that he was properly represented throughout the process. However he contested that the decision to dismiss him was disproportionate.

The appellant cited previous incidents involving other employees whereby damage was caused to aircraft. None of these other incidents had lead to those involved being dismissed and the appellant therefore felt that he ought not to have been dismissed either.

Determination

The issues came down to the proportionality of the sanction applied and procedures used. It was common case between the parties as to the issues and facts that arose.

Having heard all the evidence the Tribunal concludes that the procedures were fair and were fairly applied to all those involved, including the appellant. The decision to dismiss was consistent with those procedures and the definition therein of gross misconduct. Bearing in mind the role of the appellant the Tribunal is satisfied that the appellant was not unfairly dismissed and makes a finding to the like of the Rights Commissioner's decision r-068928-ud-08/DI. The appeal under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

