

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER (the appellant)

UD24/2010

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

EMPLOYEE (the respondent)

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Ms M. Sweeney

Mr J. Flavin

heard this appeal at Cork on 13th October 2010 and 19th January 2011

Representation:

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Appellant:

Ms. Emer O'Callaghan, Barry M O'Meara & Son, Solicitors, 18 South Mall, Cork

Respondent:

Mr. Eddie Mullins, SIPTU, Connolly Hall, Lapps Quay, Cork

This case came to the Tribunal by way of an appeal by the employer against the decision of the Rights Commissioner R-079872-ud-09/POB.

#### **Appellant's case**

The respondent had been absent from work on sick leave for a prolonged period of time before returning in October 2008. The respondent was classified as disabled due to his substance abuse. Prior to his return to work the company drew up a rehabilitation agreement, which the respondent signed.

This agreement addressed issues in relation to the respondent's rehabilitation and procedures in relation to absenteeism from work. The issues in relation to rehabilitation were discussed with the company Doctor and Nurse and according to the Nurse the signing of this agreement formed part of the respondent's return to work. The Nurse read the part of the agreement relevant to her role to the

respondent and was satisfied that he understood the content. The HR Manager and separately the Site Manager discussed the procedure in relation to absenteeism in meetings with the respondent. Both managers were satisfied that the respondent understood what was expected of him in relation to informing the company when he was not going to attend work.

Each of the afore mentioned witnesses stated that they were not aware of any literacy difficulties the respondent may have had.

On 28<sup>th</sup> October 2008, 14<sup>th</sup> November 2008 and 9<sup>th</sup> December 2008 the respondent was absent from work and failed to notify his manager within the specified time frame. A disciplinary meeting was held on 17<sup>th</sup> and a verbal warning was issued to the respondent.

On 2<sup>nd</sup> or 3<sup>rd</sup> March 2009 the Company Nurse received a phone call from a neighbour of the respondent to say that he was missing. He had not attended work and the company could not contact him until 9<sup>th</sup> March when they were informed that he was in hospital. The company wrote to the respondent setting up a disciplinary meeting for 28<sup>th</sup> March 2009.

At the disciplinary meeting the respondent was asked why he had not contacted the company on the first day of his absence and he informed them that he had been drinking and could not remember what happened. A decision was taken to dismiss the respondent and he was informed of his right to appeal this decision.

The respondent subsequently appealed his dismissal and an appeal hearing was set up in accordance with the disciplinary procedures of the company. Two people who were not involved in the original decision heard the appeal and upheld the decision to dismiss the respondent.

### **Respondent's case**

The respondent stated that he had signed a rehabilitation agreement on his return to work in October 2008. However he also stated that he had signed this document because he would not have been allowed to return to work had he not done so. The company did not advise him to seek independent advice on this agreement and he was not offered the opportunity of having a representative present during discussions on this agreement.

There was a rehabilitation programme to be implemented within the workplace and the respondent was to be facilitated with time off to attend an independent rehabilitation centre. Part of the rehabilitation programme in work meant that the respondent was to be regularly tested for drugs and alcohol. On each occasion of being tested he was found to be clear.

The respondent's representative asked a witness for the company to produce a copy of the rehabilitation programme implemented by the company. However the witness stated that the rehabilitation programme was not written down but that there was a record of each time the Company Nurse had met with the respondent.

The respondent contested that he was dismissed for a breach of this rehabilitation agreement and that the dismissal was unreasonably harsh given that he is an alcoholic. It was also stated that the respondent had literacy difficulties and that the company had not taken account of this before asking him to sign the rehabilitation agreement.

**Determination**

Having considered the evidence and submissions adduced the Tribunal accepts the evidence that the company was supportive of the respondent. The Tribunal also notes the honesty with which the respondent presented his evidence.

The Tribunal is satisfied that the procedures and dismissal were fair and finds that the respondent was not unfairly dismissed. Accordingly the Tribunal overturns the decision of the Rights Commissioner R-079872-ud-09/POB.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

