

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

CASE NO.
-Appellant UD2512/2009

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 D. Donovan B.L.

Members: Mr J. Browne
Ms S. Kelly

heard this appeal at Carlow on 24th March 2011

Representation:

Appellant: In Person

Respondent: In Person

The determination of the Tribunal was as follows:

This case came before the Tribunal by way of an employee (the appellant) appealing a Rights Commissioner Recommendation reference: r-076754-ud-09/RG.

The claimant agreed that no special facilities were required for the hearing.

Summary of Evidence:

The respondent is a sole trader whose business consists of landscaping and fencing. He employed the appellant as a general operative from the time of February 2007. The respondent stated that the first year and a half of the employment was uneventful and there were no problems with the appellant's work performance during that time.

However, it was the respondent's case that during the last three or four months of the employment there had been difficulties. The appellant began to miss days from the time of October 2008 and he had a number of absences from work that were unaccounted for during October and November 2008. In some instances the appellant telephoned to say he was sick but the respondent did not receive medical certificates for the absences.

The fencing work was primarily a two-person job and as a result of the appellant's absences the respondent fell behind in the work. The respondent told the appellant on a number of occasions

that he was not “pulling his weight” but he did not inform the appellant that he could be dismissed if matters did not improve.

The appellant was again absent on 18, 19, 22 and 23 December 2008 during which time he was needed for a contract in Bray. The appellant did not attend for work on 2, 5, or 6 January 2009 during which time he was needed for a two-person contract. The appellant attended for work on 7 January 2009. The respondent summarily dismissed the appellant on that date. The respondent had lost a work contract as a result of the appellant’s absences. The appellant was replaced in his position a day or two after the termination of his employment.

It was the appellant’ case that he had not worked on 18,19,22,23 December 2008 due to the fact that the respondent had informed his that there was no work on those dates. He accepted that he had worked elsewhere as a result of the respondent informing him that there was no work on those dates.

The appellant accepted that he was absent a number of days in early January but he stated that this was due to a work-related injury. He attended a doctor in relation to his injury and he attempted unsuccessfully to contact the respondent to inform him of the injury. The appellant subsequently attended for work on a further date but the respondent was not present. The respondent subsequently summarily dismissed him. The appellant disputed the date of termination as set out by the respondent. The appellant stated that the respondent had replaced him immediately with a family member.

The appellant gave evidence pertaining to loss.

Determination:

The Tribunal carefully considered the evidence adduced by both parties. It is clear from the evidence that there were no proper procedures followed by the respondent in dismissing the appellant from his employment.

However, the Tribunal accepts the evidence of the respondent that there were issues in relation to the appellant’s performance, which warranted dismissal. In addition, there was little evidence of the appellant’s efforts to mitigate his loss.

The Tribunal, having found that the appellant contributed to the dismissal, find the appropriate remedy to be compensation in the sum of €3,500 under the Unfair Dismissals Acts, 1977 to 2007. The Tribunal therefore varies the Right Commissioner’s Recommendation reference: r-076754-ud-09/RG.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)