

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYER

CASE NO.
UD915/2010

- appellant

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

- respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr P. Pierson
Mr O. Nulty

heard this appeal at Cavan on 26th May 2011

Representation:

Appellant(s) : Mr Gary O'Mahoney, IBEC, Confederation House, 84/86 Lower Baggot Street,
Dublin 2

Respondent(s) : Mr. Niall Phillips, Assistant Branch Organiser, Siptu, Mary Street, Mullingar,
Co. Westmeath

The determination of the Tribunal was as follows:-

This case came to the Tribunal as an employer's appeal under the Unfair Dismissals Acts, 1977 to 2007, against Rights Commissioner Decision r-083761-ud-09/JW.

This order should be read in conjunction with the appeal UD810/2010.

Background:

The respondent (employee) was employed with the appellant company from September 1981. The union's A.G.M. was held on October 30th 2007 where the opportunity for staff to avail of career breaks was discussed. Notes of the meeting were submitted to all staff. These notes explained the details of taking a career break, which included the duration of the career break, which could be from a period of one to three years. Career breaks were at the discretion of the company. When an employee had availed of the career break they had to give the company three months prior notice of their intention to return to work.

On November 1st 2007 the respondent wrote to the HR Manager requesting a 12-month career

break to commence as soon as possible, which he did. The HR Manager went on leave in late 2008 and a colleague (MK) took over. On perusing the staff personnel files she became aware the respondent was due back from his career break but there had been no contact with him.

On November 28th 2008 she rang the respondent's home number. She told him who she was and said that on looking at his personnel file it had come to light that the duration of his 12-month career break and come to an end at the start of November 2008 and asked when he was intending to return to work. He replied by asking her had she nothing better to do than to check up on him. She asked the same questions in different ways and the only reply she received was that he did not know. She told him that as it was coming to the end of the year he should think about the matter and get back to her before the end of the year to inform the company when he intended to return to work. The respondent told the Tribunal that MK had contacted him, informing her who she was and they engaged in some small talk. MK mentioned that the duration of his career break and come to an end, which he agreed. She asked how his business was going and they discussed the company's Christmas party. He said that it was a casual conversation and had not asked her had "she nothing better to do than check up on me". They decided that they would look into the matter in the New Year.

On January 7th 2009 MK tried to contact the respondent on his mobile phone on two occasions but to no avail. She rang the respondent's wife and asked her to get her husband to contact her. When the company received no response from the respondent a letter was sent to him on January 14th 2009 stating that as he had not responded stating the date he intended to return to work the company deemed that he had voluntarily resigned.

Some months later the respondent appealed the decision but it was upheld.

Preliminary Issue:

A preliminary issue was raised as to whether the respondent (employee) was dismissed or whether he had left the employment voluntarily.

Preliminary Determination:

Having considered the evidence and submissions given by both parties in this case the Tribunal find the respondent had frustrated his contract of employment and was not unfairly dismissed. Accordingly the Tribunal upset the recommendation of the Rights Commissioner and the appellant company's appeal under the Unfair Dismissals Acts, 1977 to 2007 is upheld.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)