

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

-Appellant

CASE NO.
UD2640/2009

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
Mr F. Dorgan

heard this appeal at Waterford on 1st June 2011

Representation:

Appellant: In Person

Respondent: Mr. Jim Healy, IBEC, Confederation House,
Waterford Business Park, Cork Road, Waterford

The determination of the Tribunal was as follows:

This case came before the Tribunal by way of an employee (the Appellant) appealing against a Rights Commissioner Recommendation under the Unfair Dismissals Acts, 1977 to 2007, reference r-074899-ud-09/MMG.

Dismissal as a fact was in dispute in this case.

The respondent is a security company. The supervisor gave evidence that a client complained to him about the appellant. The complaint was that the appellant had brought his son to the client's site and had also requested on occasion to leave his post early. As a result the supervisor was forced to remove the appellant from the customer's site to ensure the contract with the customer was not in jeopardy. As a result the supervisor did not roster the appellant for the following week. The supervisor stated he would have looked for a position for the appellant on a different site but before he had an opportunity to do this, the appellant requested his P45. The supervisor stated that the appellant was not informed of the customer's complaint for fear that the appellant would confront the customer about their complaint.

The company employs Ms. E and she gave evidence that on a number of occasions she was in the respondent's offices when the appellant came in and requested his P45. Her colleagues told Ms. C that the appellant was to sign a form stating he had requested his P45 prior to being provided with it. The appellant refused to sign the form.

Ms. C also works in the company. At the height of its business the company employed approximately 70 people but this has reduced to just 40 employees. She confirmed that the appellant attended at the respondent's premises and requested his P45. Up until that time a P45 had not issued to the appellant, as he had not been dismissed.

The appellant gave evidence that he was on annual leave from 28th November 2008 to the 20th December 2008. When he returned he telephoned his supervisor but he was not rostered to work, as it was Christmas week. On 30th December 2008 the appellant again telephoned the supervisor to enquire if he should attend at the usual site but the supervisor told the appellant to report to the office. There was no one present at the office on the first occasion that the appellant presented himself. He attended at the offices again on the 5th January 2009 where he met Ms. R of the company. He enquired why he had not been rostered the previous week. Ms. R informed him that the company had lost a contract and as a result there was no longer a job for the appellant. After this meeting the appellant attended at the local social welfare office where he was informed that he must have a P45 in order to make a claim for social welfare payments. The appellant contacted the company on a number of occasions seeking this document. When he met Ms. C, she gave him a form to sign, which stated that he had received an amount of money and that the matter was settled. The appellant refused to sign this document and to date he has not received a P45 from the company.

The appellant stated that his dismissal from the company had been unfairly conducted. He had not brought his child to work and he believed that the respondent's customer was very satisfied with the work he carried out on site. The appellant wanted to know why he had been selected when junior members of staff continued to be employed by the company.

The appellant gave evidence pertaining to loss.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal is satisfied from the evidence that the appellant did not tender his resignation simply by seeking a P45 to assist him in claiming social welfare benefits. The onus was on the respondent company to properly communicate to the appellant if or when he could reasonably expect other work. Without this communication the appellant was entitled to consider himself dismissed from the respondent's employment without adherence to any procedures. Accordingly, the Tribunal upholds the Rights Commissioner recommendation (reference r-074899-ud-09/MMG) under the Unfair Dismissals Acts, 1977 to 2007, having found the appropriate sum to have been awarded given the appellant's efforts to mitigate his loss.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)