

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD76/2010

WT47/2010

against

EMPLOYER

under

ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. J. Goulding

Ms. E. Brezina

heard this claim at Dublin on 5th April 2011

Representation:

Claimant:

Mr Jason O'Sullivan, Gerrard L McGowan, Solicitors, The Square, Balbriggan, Co Dublin

Respondent:

No appearance by or on behalf of the respondent.

There was no appearance by or on behalf of the respondent and the Tribunal is satisfied that the respondent was properly notified of the hearing.

Claimant's case

The appellant was summarily dismissed on the 5th August 2009 for apparently falling asleep at work. He denies this. Furthermore, the claimant maintains that he contacted the LRC on the day of his dismissal and advised them that the respondent had told him that his appeal would not be heard until the end of August, when his manager would be back at work. The appellant maintains that the LRC advised him not to appeal because it would be 5 weeks (according to himself) to his appeal hearing and that this delay would interfere with his getting Job Seekers Allowance.

Determination

Having considered the uncontroverted evidence of the claimant it appears on the face of it that he was unfairly dismissed. However he did not invoke the appeals procedure. The letter from his

employer dated 6th August 2009, which was submitted to the Tribunal by the appellant gives no mention of the appeal being delayed until the end of August as he alleged. It sets out exactly what the appellant was to do to appeal his dismissal.

He said the reason he did not appeal was because he had been advised not to do so by the LRC on the 5th August. If that was so, his e-mail of the 10th August suggests he did not intend taking that advice and intended seeking legal advice before bringing his appeal. Thus it would appear that the LRC had nothing to do with his decision not to appeal and having said, on the 10th August, that he would be bringing an appeal he subsequently did not do that for whatever reasons.

The Tribunal finds that the claimant was unfairly dismissed and taking all the circumstances into account awards him €5,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

No evidence was adduced in respect of the claim under the Organisation Of Working Time Act, 1997 and therefore this claim fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

