

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

EMPLOYEE - *appellant*

WT220/2010

UD499/2010

CASE NO.

MN462/2010

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

EMPLOYER - *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr. W. O'Carroll
Ms H. Murphy

heard this appeal at Galway on 25th August 2011

Representation:

Appellant: Mr. Blazej Nowak, Polish Consultancy Enterprise, 107 Amiens
Street, Dublin 1

Respondent: Mr. Ronnie Lawless, Ibec, West Regional Office, Ross House,
Victoria Place, Galway

This appeal came before the Tribunal by way of the employee (the appellant) appealing against the decisions of the Rights Commissioner under the Unfair Dismissals Acts, (ref. r-078402-ud-09/MH).

At the outset of the hearing the claims under the Organisation of Working Time Act, 1997 were withdrawn.

Appellant's Case:

The appellant gave evidence. He had been employed with the respondent company since June 2006. On Thursday 13th November 2008 he received a telephone call from his wife who was ill. He spoke to his manager DK and was given permission to leave and go home. He got on his bicycle and cycled to his home.

He found his wife in pain so he rang a taxi and went to the hospital with his wife and child. At the hospital he was told his wife needed an operation so the appellant rang DK and asked for the next day, Friday 14th as a day off. He told DK that he would ring him again on Sunday. On Sunday at approx 4pm he rang DK to request Monday 17th off. When the appellant went to the doctor for a note for his wife the doctor asked him if he needed to take time off as well as he appeared stressed. He obtained a medical certificate for himself from 18th November to 24th November.

On Tuesday 18th he went to his place of work at 7am. He didn't change his clothes because he wanted to see DK and explain the situation. When DK seen the appellant he asked if he was working or not, when the appellant said no he was told he was fired and to f... off. The appellant left the factory and went to a car driven by his friend, he sat there for 5 minutes and went back in to talk to SH who is the boss based in an upstairs office of building. SH repeated the same thing and threw the medical certificate in the bin. The appellant instructed his solicitor to write to the company on 20th November 2008 seeking redress. The company responded on 21st November stating that the appellant was not dismissed and they looked forward to his return to work.

Under cross-examination the appellant was asked to explain again about his departure on the day his wife took ill. Satellite navigation which is used by the company showed a company van going to the hospital and from the hospital back to the appellant's home. The appellant stated he did not know anything about it, he couldn't explain it but there was no date or time on the records produced. Asked if he had any evidence of telephone calls made to DK he said no, he did have the evidence but it was only retained on computer for six months so the information has now been wiped. The appellant also stated that he did not respond to the company's letter of 21st November 2008 as he had lost all trust with them.

DK the general manager in his sworn evidence stated that when the appellant received the telephone call about his wife's illness he arranged for a company van to bring him to the hospital. He told the driver of the van to stay with him for a while to make sure everything was ok. Later he was asked if the driver could go to the appellant's house to pick up some clothes. DK instructed the driver to do so and told the appellant to take the rest of the week off and he would see him on Monday morning 17th November. Nothing was heard from the appellant until Tuesday morning 18th when he arrived in the boning hall. The area is strictly covered by hygiene regulation and you must wear overalls, cap, apron and hairnets and the appellant was in his everyday clothes. DK was handed a medical certificate. It was a certificate for the appellant's wife. He told him it was the wrong certificate and asked the appellant if he was working or not. The appellant turned on his heels and walked out. No foul language was used.

SH the managing director in his sworn evidence stated that on the morning in question he was in his office upstairs. At approximately 8pm the appellant walked passed him. He tried to engage him in conversation but the appellant continued down the stairs. He was not aware of any issues until DK told him that evening that the appellant had walked off. The following morning he received a solicitor's letter. SH did not know why any of this had happened, the company was a good employer and they had many of the same employees for a long period of time.

Determination:

There is a fundamental conflict of evidence, which fatally undermined the appellant's assertion that he was dismissed on the date in question. It was clear to the Tribunal that the appellant dismissed himself. Accordingly, his claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

It follows that the dismissal was not unfair and therefore the related claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

