

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

- *appellant*

CASE NO.
UD1432/2010

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 P. Mcgrath

Members: Mr. B. Kealy
Mr M. O'Reilly

heard this appeal at Dublin on 28th November 2011

Representation:

Appellant: Mr Dermot O'Loughlin, Siptu, Corballis Park, Dublin Airport, Co Dublin

Respondent: Mr Eamon McCoy, IBEC, 84/86 Lower Baggot Street, Dublin 2

This case came before the Tribunal by way of an appeal of a recommendation of the Rights Commissioner ref: r-083407-ud-09/EH

The determination of the Tribunal was as follows:-

Determination

The Tribunal has carefully considered the evidence adduced. The appellant states she was unfairly dismissed when her employer made the decision to terminate her employment by reason of their having formed the view that the claimant was unfit to return to work on medical grounds.

It is common case that the appellant was absent from work on the grounds of ill health from January 2008 to January 2009. In June of 2008 the respondent company had invited the appellant to attend with the company doctor with a view to assessing the appellant's status and in particular her likelihood of being in a position to return to work and in what time frame.

The reviewing Dr. H, clearly formed the view that the appellant was having ongoing difficulties and in fact determined that the appellant was "disimproving". This determination seems to have

been made in circumstances where the Dr. appears to have questioned the appellant as to her ongoing status.

The appellant was called in for a meeting at the end of January 2009 at which time she knew that her employer was anxious to ascertain what her ongoing status was going to be. In the course of their meeting the appellant provided no comfort to her employer that there was any imminent or indeed long-term possibility for a return to work.

The respondent notified the appellant that they would be terminating her employment and at the same time afforded her a right to appeal and a six week notice period during which time she would be allowed to present evidence of an improvement in health such that she could return to work.

The appellant never contradicted the company Dr.'s medical findings with a medical report of her own. The appellant went through the appeals process knowing that the only medical evidence before the employer came from Dr. H who categorically stated that the appellant's position is "disimproving".

The Tribunal therefore finds in all the circumstances that the respondent acted fairly and reasonably in all the circumstances. The claim under the Unfair Dismissals Acts, 1977 to 2007 therefore fails and the Tribunal upholds the recommendation of the Rights Commissioner ref: r-083407-ud-09/EH.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)