

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE – *appellant*

UD2423/2009

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: Mrs. C. Egan B.L.

Members: Mr. T. Gill
Ms. H. Murphy

heard this appeal in Galway on 11th May 2011

Representation:

Appellant: Foley, Solicitors, 33 Woodquay, Galway, Francis Treanor B.L.

Respondent: Doherty, Solicitors, Seville House, New Dock Street, Galway

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an appeal by the employee (the appellant) against the decision of the Rights Commissioner ref. R-075426-ud-09

APPELLANT'S CASE:

The appellant gave evidence that he was employed by the respondent from September 2007 to September 2008 in a shop in Galway, refilling ink cartridges for resale. He had trained on a FAS

course. The employment was uneventful until August 2008, when the shop manager resigned his position with the respondent company. In the course of conversation with the appellant, the shop manager invited him to join him in a new business in Headford. The appellant stated that he did not take this offer as a genuine offer. He mentioned the offer to another colleague, who then reported the matter to the respondent.

The appellant went on to state that on Monday 1st September, 2008, he carried out his duties as normal. The respondent asked him to remain back after work, that he wished to talk to him. The appellant alleged that the respondent told him that he was “untrustworthy and uncommitted”. He put it to the appellant, that he should have told him about the offer of employment from the former shop manager. The appellant stated that he asked the respondent: “Do you want me to leave” and received the reply: “That’s up to you”, to which the appellant retorted: “OK, I’ll resign”. The respondent replied: “I accept”. The appellant stated that he felt intimidated and was not being believed. He said that his relationship with the respondent was good until this incident. He felt his position was untenable, when it was put to him he was “untrustworthy and uncommitted”, and that trust had broken down.

On the following day, 2nd September, 2008, the appellant rang the respondent to confirm that he was no longer employed. On 9th September 2008, the appellant wrote to the respondent requesting that he confirm in writing that he “was let go from his employment” and requesting his P45 in order to process his claim with the Department of Social and Family Affairs.

RESPONDENT’S CASE:

The respondent gave evidence that his former shop manager had recommended the appellant for the job. The appellant started employment with the respondent on 3rd September, 2007 and most of his dealings would have been with the shop manager.

In August 2008, the respondent had a discussion with the shop manager on the future direction of the business. The shop manager told him that he was thinking of opening a shop of his own in Headford. They parted on good terms.

On Saturday 30th August 2008, the respondent drove to the shop at 8:30 a.m., prior to playing a game of golf to deliver a filing cabinet. The appellant opened the shop at the usual time and it was due to close at 3:30pm. On his return that afternoon, the respondent noticed the former shop manager exiting the shop. On sight of the respondent, the former shop manager “looked nervous”. On entering the shop, the respondent challenged the appellant and asked him what the former shop manager “was doing there”. The appellant stated that they were “organising a pint” and that the former shop manager was looking for his P45.

The respondent noticed that his customer order book was now on top of his filing cabinet and he wondered how it got there from the back of the shop. The order book contained all of his customer

details, including details of previous orders placed. When questioned, the appellant could not explain how the order book came to be on top of the filing cabinet. In response to the respondent's query as to the whereabouts of the former shop manager, while in the shop, the appellant stated that while he was serving a customer, the former shop manager "may have gone around the back to the toilet".

The respondent was dissatisfied by the lack of explanation of what had taken place in the shop that Saturday. He advised the appellant to go home and reflect and that they would discuss the matter further on the following Monday.

On Monday 1st September, the respondent approached the appellant and closed the shop 15 minutes early to facilitate a discussion. The respondent stated that he did not wish to dismiss the appellant but wished to know what had taken place on the previous Saturday. The appellant allegedly stated: "Do you want me to leave?" At the end of the meeting the appellant resigned and handed back the keys of the shop. Later on that Monday evening the appellant telephoned the respondent and enquired as to whether or not he should come to work on the following morning. The respondent advised the appellant that he would give him 2 weeks' pay in lieu of notice.

A few days later the appellant came into the shop to get his P45. He asked the respondent "would he say he was let go instead of resigning", in support of his claim for the dole. The respondent cooperated with him because he did not want the appellant "to be short of money".

Determination:

The Tribunal has carefully considered all the evidence adduced in this case. The burden of proof rests with the appellant to demonstrate that his decision to resign from his position with the respondent was reasonable in all the circumstances. In particular, the appellant must show that the respondent acted in such a manner that no ordinary person could or would continue in the workplace. The Tribunal heard conflicting evidence from both parties. It prefers the evidence of the respondent in this case.

It is unanimously decided that there was no unfair dismissal, as the appellant voluntarily left his employment. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)