

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYER

- *Appellant*

UD511/2010

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

EMPLOYEE

- *Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr R. Murphy
Mr N. Dowling

heard this appeal at Dublin on 27th May 2011, the 21st October 2011 and 15th December 2011

Representation:

Appellant(s) : Mr. John Barry, Management Support Services (Ireland) Limited, The Courtyard,
Hill Street, Dublin 1

Respondent(s) :Richard Grogan & Associates, Solicitors, 16 & 17 College Green, Dublin 2

Determination

This case came before the Tribunal by way of an employer appealing against the recommendation of a Rights Commissioner under the Unfair Dismissals Acts, 1977 - 2007. Ref. R-079369-UD-09/EH.

The Tribunal carefully considered all of the evidence adduced together with the submissions of the parties. There being no cross appeal by the respondent employee the Tribunal was therefore required only to consider the appeal of the appellant employer.

It is common case that the dismissal of the respondent took place following the holding by the appellant of two meetings with the respondent. The first of these resulted in the respondent being suspended from his work roster, the second resulting in his dismissal.

The Tribunal firstly considered the assertion by the appellant that a delay by the respondent in applying for the appropriate employment licence fundamentally breached his employment contract thus terminating it. The Tribunal finds and determines that while the respondent did

delay in making this application that he also prior to his dismissal informed the appellant that he had applied for this licence. It is therefore determined that no such termination of his contract took place.

The Tribunal secondly gave consideration to the circumstances surrounding the two meetings referred to. In relation to the first meeting it is found that an oral warning only was given to the respondent in respect of his alleged misconduct in delaying his application for the appropriate licence and that since this meeting was the first formal stage of the implementation of their disciplinary procedure that a written warning should have been issued. It is therefore determined that the initial disciplinary procedure implemented by the appellant was flawed.

Additionally the Tribunal finds and determines that the second and final disciplinary procedure implemented by the appellant which was the second meeting was conducted without any second written warning having been issued in breach of their own procedures. It is therefore determined that the second disciplinary procedure was also flawed.

The question considered by the Tribunal is whether these flaws made the disciplinary process engaged in by the appellant an unfair one. In this regard the Tribunal considered Section 6 (3) of the Unfair Dismissals Act, 1977 as amended by Section 5 (b) of the 1993 Act which states that *“in determining if a dismissal is an unfair dismissal regard may be had, if the Rights Commissioner, the Tribunal or the Circuit Court, as the case may be, considers it appropriate to do so (a) to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal”*.

The Tribunal is satisfied that the procedural flaw referred to represents unfair and unreasonable behaviour on the part of the appellant towards the respondent which resulted in his dismissal. It is therefore found and determined that the dismissal was unfair.

Final consideration was given as to whether the respondent contributed to his dismissal. It is found that the respondent indulged in significant delay in making his application for the appropriate employment licence and that the respondent therefore contributed to his dismissal. The Tribunal is therefore satisfied to confirm the recommendation of the Rights Commissioner and thus refuse the appeal and therefore determine that the appellant pay to the respondent the sum of €3,500 compensation in respect of his unfair dismissal

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)