

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1316/2010
RP1789/2010

Against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Ms J. Winters
Ms. A. Moore

heard this claim at Cavan on 25th November 2011 and 30th January 2012

Representation:

Claimant: H J Ward & Company, Solicitors, 5 Greenmount House, Harold's Cross, Dublin 6w

Respondent: Eirinn McKiernan & Co, Solicitors, 11 Ashe Street, Cavan

The determination of the Tribunal was as follows:-

Background:

Following a NERA inspection the respondent company became aware that it needed a work permit for the claimant. An application form was submitted and the application was refused. While the company had a duty to apply for the work permit it considered it had no obligation to appeal the decision when the permit was refused.

Respondents case:

Mr V for the company stated that up to twenty non- nationals worked for the company. At interview they were asked if they had permits to work but the company did not look for evidence of same. Following a NERA inspection it was necessary to apply work permits for twelve people, 10 out of the 12 were successful in their applications. It was contrary to statute and public policy to have the claimant remain working once the permit request was refused. Under cross examination MR V said there was an error in the letter of termination which was sent to the claimant. It stated that it was due to a downturn in business in the first paragraph but later went on to explain the issue with the work permit. There had been previous redundancies and the work force had been reduced from 100 to 50. The claimant had told him he was legal as he had a

child born in the state.

Claimants case:

The claimant in his sworn evidence stated that he began work as a driver/operator. He had an accident in 2008 and the doctor advised that he should only do light work.

He was aware that the application had been refused and brought a letter to HR to have an appeal lodged. He heard nothing and again asked about the appeal. His wife telephoned the department and was told there was an issue with the number of hours that was stated on the applications being worked by the employees. All had been refused for that reason. He called in person with a letter to the department and was told the company had not provided any answers to questions asked. On his last day he was called to do a night shift, when he went to start the shift he was called to the office and told he was being sacked. The claimant had already enrolled in college and had a student card which allowed him to work. The company asked for the details and said to "leave it with them". He followed up with them but was told the company didn't want him back.

Under cross examination the claimant said that at interview he was never asked about his status in the country. He was aware from other people that they were working too many hours and four others had got sacked. The Department had said they would look at the situation if they received an appeal or answers to questions asked. He felt that the company just didn't want him anymore.

Determination:

The Tribunal carefully considered the evidence adduced. It is agreed (a) that the respondent following an inspection by NERA submitted an application for a work permit for their employee, the claimant, so as to comply with the provisions of the Employment Permits Act 2003 and (b) that following the communication of a decision to refuse the issue of this work permit the respondent terminated the employment of the claimant.

The Tribunal is satisfied and determines that the respondent (a) failed to consult or engage with the claimant in respect of the reasons given for the refusal to issue the permit (b) pre-determined the outcome of an appeal against this refusal without any notice in a communication to him and (c) terminated the employment of the claimant without any notice to him or consultation or engagement with him thus depriving him and denying him any opportunity to appeal the decision. The Tribunal is further satisfied and determines that the foregoing represents behaviour of the respondent of a procedurally defective nature resulting in their behaving unfairly and unreasonably towards the claimant.

Section 6(3) of the Unfair Dismissals Act 1977 as amended by section 5(b)(a) of the 1993 Act 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 to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal".

The Tribunal therefore finds and determines that the claimant was unfairly dismissed by the respondent. It awards him compensation in the sum of €13,500.

The Tribunal having found that an unfair dismissal occurred dismisses the claim under the Redundancy Payments Acts, 1977 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

