

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE – *Appellant*

UD957/2010

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

EMPLOYER - *Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony B.L.

Members: Ms M. Sweeney
Mr O. Wills

heard this appeal at Cork on 13th February 2012

Representation:

Appellant(s) : In Person

Respondent(s) :Independent Workers Union, 55 North Main Street, Cork

Preliminary Issue

The representative for the respondent/employee made an application to the Tribunal to adjourn the hearing as the respondent/employee was unable to attend the hearing.

The Tribunal refused the application on the basis that two adjournments had been previously granted in this case and that it had been made clear when granting the second adjournment, on 1 December 2011, that no further adjournments would be granted.

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 to 2007 and the Terms of Employment (Information) Act, 1994 and 2001. Reference R-078896-UD-09JOC and R-078899-TE-09JOC.

Summary of the Evidence

The appellant owns and runs a horse training business. A friend told him the claimant was looking for work and some place to live. The appellant created the position of general yard worker and stable cleaner for the respondent as well as providing him with accommodation in a

cottage on his land. Prior to taking on the respondent on 3 November 2007 this work was done by riders/trainers. However, in early 2009 the appellant had only a few horses in training and he was unable to maintain the respondent's position, which he had created for him. The appellant dismissed the respondent on 28 February 2009.

The appellant agreed in cross-examination that he had taken on a rider on 9 February 2009 to replace one who was leaving on 10 February 2009. The replacement rider also cleaned stables and did general yard work in conjunction with his riding duties. The respondent was not a rider.

The appellant acknowledged that he did not provide the respondent with a contract of employment. The respondent had never asked him for a contract of employment. He provided accommodation for the respondent in a cottage he owned on the farm and denied that the respondent was disadvantaged in any way by not having a contract. He accepted he was in breach of the Terms of Employment (Information) Act, 1994 and 2001.

Determinations

As the replacement rider discharged both functions and the respondent could not ride the appellant no longer required the respondent's service. Accordingly, the Tribunal finds that the dismissal of the respondent was not unfair. The appeal under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the Rights Commissioner's recommendation is set aside.

The Tribunal upholds the decision of the Rights Commissioner under the Terms of Employment (Information) Act, 1994 and 2001 but varies the compensation awarded, reducing it to €612.00, being equivalent to two weeks' remuneration.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)