

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYER

CASE NO.  
UD1732/2010

*- appellant*

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 J. Revington S.C.

Members: Mr D. Peakin  
Mr T. Brady

heard this appeal at Dublin on 9th January 2012  
and 7th March 2012

#### **Representation:**

Appellant(s) : Ms. Emer Woodfull BL instructed by:  
O'Donohoe, Solicitors, 11 Fairview, Dublin 3

Respondent(s) : Mr Arthur Hall, Regional Secretary, TEEU, 6 Gardiner Row, Dublin 1

**This case came before the Tribunal by way of an employer appealing against the decision of a Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007 reference: r-082560-ud-09.**

The determination of the Tribunal was as follows:-

#### **Background:**

The claimant was employed as a Grade 6 Engineer (an electrician by trade) from 19<sup>th</sup> May 2008 to 20<sup>th</sup> May 2009. There had been no major problems with the claimant's work until 17<sup>th</sup> February 2009. He was the lead person changing over an intruder panel in the private residence of a senior figure of the legal profession. It was specified by the Managing Director (MD) all cables were marked inside the control panel and to take new ohm's readings in order to upgrade to EN50131. However on inspection by the Supervisor (JC) the MD's instructions had not been carried out and regulations had not been adhered to. The claimant was instructed to correct the matter. The MD gave the claimant a written warning.

In early May 2009 the claimant and JC (Project Manager on site) were installing infra red sensors on CCTV cameras on the private residence of a senior figure in politics. JC worked closely beside the claimant. The box he was working on was normally locked with JC having the only key. The box was opened in the morning and locked later that day.

On the evening of 11<sup>th</sup> May 2009 JC and a colleague (TM) went to the site to check the infra red lamps which could only be done in the evening. There appeared to be a problem. JC removed the lid from the

bottom of the IR Power Supply Unit using an insulated screwdriver. He unscrewed three of the four screws. As he touched the loosened fourth screw he felt a mild shock up his right arm. Having thought it was a static shock he proceeded to remove the second lid. On touching the lid he received a severe shock and dropped the lid immediately. As it was so dark they could not see what had caused the shock and decided to switch off the power supply and lock the box again.

The owner of the house was absent for a week and JC and TM could not return until 18<sup>th</sup> May 2009 to check out the wiring in the pole. On opening the lid of the power unit they found the mains input terminations were terminated incorrectly. The Live and Neutral wires were terminated in reverse in their termination blocks which caused the chassis to become live. The Brown live wire was terminated in the Neutral terminal and the Blue Neutral wire was terminated in the Live terminal. The Earth wire was terminated in the Earth terminal. On removal of the lid from the middle power supply they discovered that the mains input terminals were also terminated incorrectly as below in the bottom power supply unit.

On further inspection of the top power supply which housed the photo-cell terminations they observed the wiring and terminations and could see the fault. The chassis on both power supply units to become live while the photo-cell unit was engaged. Photos were taken on the day and submitted to the Tribunal on the day of the hearing. JC contacted the Managing Director and informed him of the faulty wiring. He later came to inspect it. An investigation and report was submitted by an independent engineering consultant.

### **Respondent's Position:**

The Managing Director, JC, TM, the independent investigator and another employee (AMN) gave evidence. All gave detailed evidence of the seriously faulty wiring in the pole that caused JC to get a shock. They explained that if JC had put his hand on the pole he would have received a more severe shock, it was 220 volts.

The MD and JC explained that the claimant had been reprimanded over numerous personal phonecalls during working hours, especially on the day he was installing the wiring. He had received several warnings on the matter. The MD explained that their client base included various predominant people and various Government departments; he had been in business for over 25 years. This was a very serious incident.

On 20<sup>th</sup> May 2009 the claimant was contacted to come to the office to speak to the MD and JC about the incident. The claimant was not informed prior what the meeting was about and was not offered to have a witness / representative with him. The claimant was asked about the faulty wiring and shown the pictures. The claimant apologised and asked could it be seen as a warning. The conversation got very heated. The claimant was swearing and abusive. The MD told him to get out. The claimant asked was he sacked and was told yes. A letter of dismissal and any monies owed was sent to the claimant.

### **Appellant's Position:**

The claimant and a former colleague gave evidence. He explained that he had seven years experience as a qualified electrician. He had liked his job and got on with his colleagues. He agreed that he had received personal calls while working, he was getting some work done in his home, but the amount was not excessive.

On perusal of the photographs of the faulty wiring he stated that it had not been his work, he was very particular about his workmanship. He explained that there had been other electricians on site and any one of them could have worked on the power supply units. He said that he had no advance warning of what the meeting on 20<sup>th</sup> May 2009 entailed. He had not wanted to lose his job but was told that because of the seriousness of the incident there was no alternative but to dismiss him. He had told the MD and JC it was not his work.

He told the Tribunal that he had not received any verbal or written warnings and had not seen the pictures of the faulty wiring until the first day of the Employment Appeals Tribunal hearing. Neither the pictures nor

the investigator had been present at the hearing with the Rights Commissioners.

The claimant gave evidence of loss.

**Determination:**

The Tribunal have carefully considered the sworn evidence and submissions by both parties over the two days of this hearing. The Tribunal accept the evidence adduced by the appellant's witnesses in this case. When questioned the respondent could not seem to give any creditable or alternative reason as to who had installed the faulty wiring. The Tribunal accepts that the respondent was given various warnings over his employment with the appellant company.

The Tribunal are also mindful that there was some fault on behalf of the appellant and that full range of fair procedures were not carried out but considers that the respondent contributed 100% to own dismissal.

The Tribunal uphold the appellant's appeal in this case under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)