

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

UD353/2011

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

1. EMPLOYER
2. EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. F. Crawford B.L.
Members: Mr. D. Peakin
 Mr. N. Dowling

heard this appeal at Dublin on 21st June 2012

Representation:

Appellant:

Mr. Ian McDonnell, Regional Secretary, TEEU, 6 Gardiner Row, Dublin 1

Respondent:

No appearance by or on behalf of the respondent

This case came to the Tribunal by way of an appeal by the employee against the decision of the Rights Commissioner r-082813-ud-09/POB

There was no appearance by or on behalf of the respondent. The Tribunal is satisfied that the respondent was properly notified of the hearing.

Claimant's case

The claimant was employed by the respondent from 26th October 1996 to 30th April 2009. Up until March 2009 there had been no disciplinary issues with the claimant. However he was called to an investigatory interview, scheduled for 28th April 2009. He was informed of this meeting in writing the day before it took place.

At this meeting the claimant was given a written warning and a final written warning in relation to separate matters. Although these warnings were dated 9th April 2009 the claimant did not receive them until the investigatory meeting and was not given an opportunity to appeal these warnings.

Separate to the issues outlined in the written warnings, the claimant was accused of being absent without authorisation and informed that there had been a customer complaint against him. The claimant was then told to hand back his keys and leave. He was not given a letter of dismissal and was not informed that he could appeal this decision.

In relation to these allegations the claimant informed the Tribunal that he had not been on unauthorised leave but had applied for holidays in advance and had been verbally granted this leave. He had informed the respondent in writing of his intention to take this leave and posted it together with other documents. The respondent subsequently informed him that the other documents were received but not the leave application.

With regard to the alleged complaint by a customer against the claimant he stated that this complaint was in fact against the respondent for not allowing the claimant to stay on the customer's site and complete the work.

The claimant never had an employee handbook and did not sign a contract of employment.

At the time of his dismissal the claimant was earning €800.00 per week, inclusive of overtime. The claimant was unemployed from the date of termination of employment until October 2011 at which time he secured employment on a 3 day per week basis.

Determination

Having considered the uncontested evidence of the claimant the Tribunal finds that he was unfairly dismissed from his employment with the respondent.

The Tribunal is satisfied that the allegations against the claimant in relation to unauthorised leave and a complaint by a customer were unfounded and that the disciplinary procedures adopted by the respondent were contrary to fair procedures and natural justice.

The Tribunal upsets the decision of the Rights Commissioner r-082813-ud-09/POB and awards the claimant €83,200.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)