

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER (the appellant)

UD669/2011

against the recommendation of the Rights Commissioner in the case of:
EMPLOYEE (the respondent)

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. C. Corcoran B.L.

Members: Mr. M. Noone
Mr. P. Trehy

heard this appeal at Dublin on 1st August 2012

Representation:

Appellant:

Respondent:

The respondent in person

This case came to the Tribunal by way of an appeal by the employer against the recommendation of the Rights Commissioner Ref: r-095183-ud-10/TB.

Appellant's case

There was a preliminary issue in relation to whether the appeal was lodged with the Tribunal within 6 weeks of the date that the employer received the decision of the Rights Commissioner.

The representative for the appellant (MR) told the Tribunal that the decision was received by the appellant more than one day after the date of signature there-on and that meant that the appeal was lodged within six weeks of the date the decision was received.

MR told the Tribunal that the respondent was dismissed on 20th January 2010 for gross misconduct in relation to an incident that occurred at the premises of one of the appellant's clients.

MR stated that he was a Health and Safety Advisor and not the employer of the respondent. He said that an E.H.S. Director on the client's site asked the respondent to come down off a Truck as he was not wearing a safety harness.

MR did not dismiss the respondent but was on “loudspeaker on his phone” and heard a director of the respondent do so. The person who dismissed the respondent was not at the hearing to give evidence. The E.H.S. director was not present either and neither was the truck owner.

The Tribunal enquired with the representative as to how he could run his case without any witnesses and the representative informed the Tribunal that he had a written report from the customer involved in the incident but that he was not present either.

The Tribunal pointed out to the appellant’s representative that the respondent has a right to challenge allegations made against him by cross-examining the people making those allegations and that hearsay evidence is not acceptable.

Respondent’s case

The respondent stated that allegations were made against him but that he denied these allegations and he contended that he was unfairly dismissed from his employment with the appellant. He asked the appellant for the name of the person who made the complaint and was told “I will not give you a stick to beat me with”.

The respondent told the Tribunal that he was looking for work for 12 months after he was dismissed but that it was difficult to get a job without a reference from the appellant. In November 2011 the respondent managed to secure another job and is still employed there. He is currently earning €560.00 per week. Before he was dismissed by the appellant he was earning €34,000.00 per annum.

Determination

The Tribunal is satisfied that the appeal was lodged within 6 weeks of the receipt of the Rights Commissioner’s recommendation and therefore finds that this case can be heard.

The representative for the appellant was not in a position to run his case or to give direct evidence and the respondent denied the allegations against him. Therefore based on the evidence adduced at the hearing the Tribunal finds that the respondent was unfairly dismissed.

The Tribunal varies the decision of the Rights Commissioner Ref: r-095183-ud-10/TB and awards the respondent €23,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)