

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE - **Appellant/Employee**

UD332/2011

against the recommendation of the Rights Commissioner
R-090350-ud-10/JT in the case of:

EMPLOYER - **Respondent/Employer**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr F. Moloney
Mr M. O'Reilly

heard this appeal at Dublin on 6 June
and 19 September 2012

Representation:

Appellant:

Respondent:

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an employee appealing against the Recommendation of the Rights Commissioner reference **R-090350-ud-10/JT**

For clarification purposes the appellant shall be referred to as the employee and the respondent as the employer

Determination:

The Tribunal has carefully considered the evidence adduced in the course of this two-day hearing. The employee was dismissed at the end of a protracted period of time wherein the employer was becoming increasingly critical and frustrated with his performance.

The Tribunal accepts the inherent difficulties associated with being answerable to and employed by a committee or council, most of whom operate in a voluntary capacity and wherein decisions are made at committee meetings and the person delegated to relate direction and information is subject to change.

However, it is clear to the Tribunal that the employee herein was employed for his expertise and ability. Whether the employee was employed as a greenkeeper or as a groundsman is not relevant. What is clear is that the employee was not a caretaker but had the responsibility for ensuring that the green areas in and around the club were fit for purpose. Primarily the purpose in this club was pitch and putt and bowling.

The Tribunal accepts that the employee could probably never be able to keep all of the club members happy all of the time. Different people have different requirements and expectations. However, there can be no doubt that the closure of the bowling green for a significant part of its summer 2009 season was a disaster for the club and the employee accepted he mismanaged and mistimed the annual workload required to keep the green at competition level.

To his credit, the employee accepted his fault in this regard. However the employee was not inclined to accept or take on board the fact that the council was dealing with a continuous stream of complaints from dissatisfied club members about different aspects of grounds and green maintenance. Whilst some of these complaints may have been unreasonable they could not all have been and the employee was aware from April 2009 that there was a general dissatisfaction with his work which went well over and above the issue of the closure of the bowling green.

The employee was issued with an oral warning in April 2009 and a further written notice was given in May 2009 when the club council perceived that the employee was not doing enough to repair the bowling green.

The Tribunal has some sympathy for the employee as he appeared to have nobody to speak on his behalf at council meetings and there was no process for agreeing priority of works to be done and maintaining an effective liaison between council and groundsman/greenkeeper.

However, the Tribunal has to be cognisant of the fact that the employee was employed for his expertise and that there must have been an onus on the employee to insist on being party to any discussions and inspections relating to the state of the club grounds. The employee lacked any pro-active drive and instead seemed to be continually on the defensive. In addition there can be no doubt that the employee actively refused to abide by the request of his employer to work the hours which would allow club members a greater opportunity to meet him on the premises. The Tribunal accepts that working from 6-30am to 2-30pm reduces greatly the opportunities club members and council members would have to meet the employee in the working day.

In short the relationship between the employee and the council became fraught and unworkable. When he attended the meeting on 25 January 2010 the employee appeared to know that his employment was at risk yet instead of trying to ameliorate the situation he refused to address

the issues raised leaving little choice to the employer other than to dismiss him.

The Tribunal finds that it agrees with the Rights Commissioner in so far as he found that the termination was not procedurally sound and lacked fairness and reasonableness. However the relationship had broken down and it seems there was an inevitability to the termination in all the circumstances. The Tribunal awards the sum of €10,000-00 to the employee for the lack of good procedure under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)