

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE  
(*appellant*)

CASE NO.  
UD893/2011

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

EMPLOYER  
(*respondent*)

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr D. Moore  
Mr M. O'Reilly

heard this appeal at Dublin on 28th September 2012

Representation:

\_\_\_\_\_

Appellant(s) : In person

Respondent(s) : Mr. Terry Cummins, IBEC, Confederation House, 84-86 Lower Baggot Street, Dublin 2.

The determination of the Tribunal was as follows:

### Background

The appellant was employed with the respondent as a Warehouse Operative since 13<sup>th</sup> March, 2000. He was dismissed from his employment on 16<sup>th</sup> April, 2010 following a lengthy absence from work. The appellant claims he was unfairly dismissed from his employment.

### Respondent's case

On 25<sup>th</sup> March, 2008 the appellant went on sick leave and was absent until 16<sup>th</sup> April, 2010 which was the date of termination of his employment. On 5<sup>th</sup> October, 2009 the company doctor concluded that the appellant should not return to manual work. On 29<sup>th</sup> March 2010 he was again deemed unfit for work by the company doctor. The appellant attended a meeting with the company on 8<sup>th</sup> April, 2010 and advised that the medical opinion indicated that he was unfit to return to work. The appellant was given an opportunity to reply to the situation and another meeting took place on 16<sup>th</sup> April, 2010. At this meeting the appellant was advised that

his employment would be terminated. The decision was appealed on 12<sup>th</sup> May, 2010 and the decision to dismiss was upheld by the Managing Director of the company.

It was confirmed by the respondent that sick leave certificates were submitted by the appellant during his absence from work.

**Claimant's case**

In March, 2008 the appellant suffered an injury at work while loading a truck, which resulted in a prolonged period of absence from work. Due to hospital backlogs and cancellation of appointments by the hospital, the appellant's recovery was hindered. The company doctor deemed him unfit for work. The company refuted that the recurring back problems were attributed to the appellant's work. The appellant still remains unfit for work and is now on illness benefit. He received 4 weeks sick pay from the respondent.

**Determination**

Having considered all the evidence in this case, the Tribunal is satisfied that the employee was not unfairly dismissed. It is therefore found that the decision of the Rights Commissioner is upheld and that the appeal of the appellant fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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