

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

- appellant

UD1285/2011

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: Ms. E. Coughlan

Members: Mr J. Browne
Mr A. Butler

heard this appeal at Carlow on 3rd August 2012.

Representation:

Appellant: Ms Joanna Kwiatkowska, 2 Doirin Alainn, Ballylynan,
Co Laois

Respondent: Mr. Brian O'Sullivan, IBEC, Confederation House, 84/86
Lower Baggot Street, Dublin 2

The decision of the Tribunal was as follows:-

This case came before the Tribunal by way of the employee (the appellant) appealing against the recommendation of the Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007 reference r 095343-ud-10/TB.

Respondent's Case:

The respondent is engaged in the catering business and manages the catering in a college in Carlow. It was here that the appellant was employed. Due to the economic downturn and restructuring GOR (Operations Manager) together with a colleague from HR held a meeting with approximately four staff members to inform them of possible redundancies. This meeting took place on 18th January 2010. No individual was informed at this meeting that their roles were being made redundant. A decision was taken some days later. LIFO applied and only two staff members were chosen for redundancy. The appellant was not one of these.

JOB, General Manager worked for the respondent for twelve years. It was when he commenced working in the college that redundancies were announced. Following the briefing session on 18th January 2010 the appellant commenced a period of sick leave the following day and furnished the respondent with medical certificates until 2nd February 2010. JOB tried to contact the appellant by telephone and also wrote to the appellant on a number of occasions after 2nd February 2010 but the appellant did not respond to any of these. He expressed his concern at the appellant's failure to report for work and asked the appellant to contact him by telephone. The appellant made no contact with the company after 2nd February 2010.

On 23rd March 2010 JOB again wrote to the appellant outlining that following her failure to contact him in relation to her unauthorised absences from work, he was left with no alternative but to terminate her employment. The appellant's employment was terminated that day. She was offered a right of appeal within seven days. She chose not to appeal the decision.

JOB contended that the matter could have been resolved very easily if the appellant had responded to the letters sent to her as her role was not selected to be made redundant.

Appellant's Case:

The appellant was employed as a catering assistant and commenced employment on 10th September 2007. On 18th January 2010 T asked the appellant and two of her colleagues to come to her office. Both GOR and JOB were present. They were told there was no work available for them and a few people were being let go. The appellant was in shock and asked her colleague E to translate what had been said to her. One of her colleagues had worked seven years for the company and the appellant was employed for two and half years.

The appellant spoke to JOB in the canteen and claims that he told her that she had been chosen to be let go. She contended that JOB did not know the role she carried out for the respondent. The individuals were told that there was still one position open and they could apply for it.

It was a very stressful time for the appellant and she had to visit her doctor later that day. She did not respond to phone calls or to the letters sent by the respondent as she had already been told that she was dismissed. The appellant contended that she had no chance of getting her job back.

The appellant secured alternative work on 5th February 2010.

Determination:

The Tribunal carefully considered the evidence adduced during the course of the hearing. It is clear to the Tribunal that there is a conflict of evidence between the parties.

Because of the economic downturn the respondent had to restructure and let two staff members go. This was done on a last in first out basis and the appellant's role was not selected for redundancy during this process.

The appellant commenced a period of sick leave on 19th January 2010 until 2nd February 2010 and furnished the company with medical certificates for this period. Following the

appellant's failure to report for work on 3rd February 2010 the respondent made several attempts to contact her by telephone and also wrote to her on three separate dates. The appellant did not respond to any of these. Thus the respondent was left with no alternative but to terminate the appellant's employment.

The Tribunal is satisfied that the dismissal of the appellant was not unfair and accordingly upholds the recommendation of the Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____
(CHAIRMAN)