

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – *appellant*

CASE NO.
UD476/2011

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

EMPLOYEE – *claimant*

V
EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P McGrath BL

Members: Mr M Flood
Ms E Brezina

heard this appeal at Trim on 16th January 2013

Representation:

Appellant(s): Mr Richard Grogan
Richard Grogan & Associates, Solicitors
16 & 17 College Green, Dublin 2

Respondent(s): Mr Michael O'Sullivan
HR Advisor
Arra HRD, Castlelost West, Rochfortbridge, Co Westmeath

This case came before the Tribunal by way of an employee appealing the recommendation of a Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007, ref: r-095375-ud-10/JW.

The determination of the Tribunal was as follows:-

The Tribunal has carefully considered the evidence adduced. This matter came before the Tribunal on appeal from a Rights Commissioner's findings dated 25th January 2011.

The claimant's case is that he was fired by the company's area manager, Mr S, on 29th February 2010. The evidence was that there was a truck with a trailer on the premises that required a tyre replacement. It is common case that the trailer was jacked up and that the claimant was anxious

to remove the entire wheel with the help of an airgun. An alternative method would be to replace the tyre on the wheel without the need to remove the wheel. The claimant was unable to find the appropriate socket and brought this fact to the attention of his line manager, Mr B. On examining the jacked trailer the line manager felt it would be perfectly in order for the tyre change to be performed without the need to remove the full wheel per the second method outlined.

It is also common case that Mr B ultimately performed the tyre change and it was done efficiently and without mishap. The parties agreed that the claimant refused to perform the task in question though the parties disagreed on the reason given. The claimant said that the method was unsafe and Mr B ultimately understood that the claimant's back was sore. Either way there can be no doubt that Mr B was greatly irritated by the claimant's refusal to perform what he believed to be an unexceptional task well within the remit of the claimant's capabilities.

Mr B phoned the area manager, Mr S, and explained the claimant's refusal to perform duties to him. Mr S then spoke directly to the claimant. Mr S is adamant that there was no heated conversation whilst the claimant said that he was abused, there were expletives and that ultimately he was told to take his stuff and go. Mr S accepts that he told him to go but stated that this was in the context of sending home an apparently sick or injured member of staff forrest. This call took place on 29th January 2010.

The claimant was out for a week's holidays the following week and was due back on Monday 8th February 2010, but failed to turn in. This did not raise any questions in the workplace even though Mr S and Mr B said they fully expected that the claimant would return to work that day.

On Tuesday 9th February 2010 the claimant did arrive in the workplace but only to look for his P45. It is at this point that there can be no doubt that both the claimant and Mr B had different ideas about what had transpired in the course of the conversation on 29th January 2010.

The Tribunal is not unfamiliar with these situations. Too often a disagreement occurs in the workplace where "in the heat of the moment" an employee resigns and or an employer fires an individual. This is done without thought or consideration and it is recognised that such a heated incident needs to be reconsidered after an appropriate "cooling off" period.

As it happens a naturally occurring "cooling off" period did occur in these circumstances when the claimant went on a week's holiday.

The Tribunal must consider the steps taken by the parties after this cooling off period, i.e. by the Monday 8th and Tuesday 9th February 2010. There can be no doubt that Mr S was not anxious to ensure the return of the claimant in any proactive way. Nor on the other hand does it seem that the claimant was anxious to take up his position and/or question Mr S's authority to fire him. The claimant's only concern seemed to be to get his P45 for the purpose of claiming a Social Welfare payment.

The managing director only came to understand the fact that there was an issue between the parties on receipt of solicitor's correspondence and at that time, as is his prerogative, opted to let matters take their course.

On considering all the evidence and the facts as outlined to the Tribunal, the Tribunal accepts that the claimant believed he had been fired on Friday 29th January 2010 for failure to perform

the task required of him. In this context the Tribunal finds that the claimant was unfairly dismissed.

The Tribunal can find no evidence to suggest that the claimant was anxious to retain his position. He did not query Mr S's authority nor did he appeal Mr S's decision to a higher level. At the core is the fact that the claimant had refused to perform a task he should have done. The Tribunal must find that the claimant has contributed significantly to the outcome.

The Tribunal upsets the recommendation of the Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007, (ref: r-095375-ud-10/JW) and awards the claimant €2,000.00 (two thousand euro) compensation.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)