

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYEE - **Appellant/Employee**

UD468/2011

TE58/2011

WT179/2011

against the recommendations of the Rights Commissioner
R-079741-UD-09/GC, R-079732-TE-09/GC and R-079737-WT-09/GC in
the case of:

EMPLOYER - **Respondent/Employer**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
TERMS OF EMPLOYMENT INFORMATION ACTS, 1994 AND 2001
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms J. McGovern BL

Members: Mr L. Tobin
Mr P. Trehy

heard these appeals at Dublin on 6 November 2012

Representation:

Appellant:
In person

Respondent:
Ms Catherine Day, Peninsula Business Services (Ireland) Limited,
Unit 3 Ground Floor, Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an employee appealing against three Recommendations of the Rights Commissioner reference R-079741-UD-09/GC, R-079732-TE-09/GC and R-079737-WT-09/GC

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

Preliminary Issue

At the outset the Tribunal was asked by the employer's representative to consider whether there was jurisdiction to hear the appeal under the Organisation of Working Time Act, 1997 in circumstances where the award of the Rights Commissioner had already been paid. The Tribunal noted that the claim before the Rights Commissioner had referred to matters covered in Part II of the Act relating to minimum rest periods and other matters. The Tribunal is restricted to considering matters arising under Part III of the Act relating to holidays. Additionally Section 28(1) of the Act provides that appeals from decisions of a Rights Commissioner are to be made to the Labour Court. For all these reasons the Tribunal found that there was no jurisdiction to hear the appeal under the Organisation of Working Time Act, 1997.

Substantive Issue

The employee worked as a cleaner for the respondent, which provides cleaning and security services at shopping centres and office blocks, from February 2007. There was a dispute between the parties about the employee's hours of work which was dealt with by the Rights Commissioner under the Organisation of Working Time Act.

In December 2008 and January 2009 the employee involved his supervisor in disputes concerning his accommodation even though this was in no way related to his employment. While there was a dispute between the parties about the times of some of the events it was common case that on 3 February 2009 a site security officer (SO) contacted the employer's control room as he was unable to find the key for the side entry gate in order to open the gate to enable a delivery of goods to be received. The employee, who accepts that SO contacted him in regard to the lack of a key, attended the site and provided a key for the gate.

The managing director (MD) of the respondent attended the site at around 10-00am and the employee was able to show MD that the keys were in their rightful place in the security lodge (the lodge). The employer's position was that at this point the employee made disparaging remarks about SO to the effect that he would be able to provide better security and then made offensive remarks to MD who began to be concerned for her personal safety. MD then asked the employee to leave the lodge. The employee's position was that after MD arrived she became angry with him and dismissed him.

During the evening of 3 February 2009 MD again attended the site this time in the company of her co-director (CD). It was common case that the employee was on site and that bedding and furniture, as well as food, belonging to the employee were found in the ESB switch room at the site. The employer's position was that the employee was living in the switch room having had a dispute with his landlord. The employee's position was that he was merely storing some of his belongings in the switch room as his new accommodation was too small for all his belongings.

It was common case that the employer arranged for the employee to stay in a hotel that night at their expense. The employer's position was that they could not contemplate any suggestion that the employee spend any more time in the switch room in circumstances where the employee could not suggest anywhere that he might spend the night except under a bridge. The employee's position was that he regarded the night in the hotel as a bonus for having been a good worker.

The employer's position was that MD and CD met the employee the following morning 4 February 2009 in the lodge at 8-30am where a disciplinary hearing was conducted. The notes of the meeting assert that the issues raised with the employee related to the missing key and his use of the switch room as accommodation. On 10 February 2009 MD wrote to the employee to Inform of his dismissal, effective 4 February 2009 9-00am, for

- Gross act of dishonesty, and neglect
- Use the mean of unacceptable verbal abuse towards management
- Gross breach of safety rules
- Taking part in activities which result in adverse publicity to our company

These items referred to the missing key, the employee's behaviour towards MD, allegedly repeated at the meeting on 4 February 2009 and the last two items referred to the employee's use of the switch room.

The employee's position was that no such meeting took place and he had been dismissed the previous morning. The employee did not exercise his right of appeal against the decision to dismiss him

Determination:

Having heard all the evidence and considered same carefully the Tribunal has come to a majority decision with Mr Trehy dissenting that the appeal under the Unfair Dismissals Acts, 1977 to 2007 fails and the recommendation of the Rights Commissioner **R-079741-UD-09/GC** is upheld.

No evidence having been adduced in this regard the appeal under the Terms of Employment Information Acts, 1994 and 2001 fails for want of prosecution and the recommendation of the Rights Commissioner **R-079732-TE-09/GC** is upheld.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)