

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE -claimant

CASE NO.

UD573/11

Against

EMPLOYER - respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. MacCarthy SC

Members: Mr J. Horan
Ms N. Greene

heard this claim at Naas on 13th February 2013.

Representation:

Claimant: REP

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:-

The respondent's case is that the claimant engineered his own dismissal by refusing from November 2010 until his dismissal in February 2011 to wear items of uniform which he had worn daily since the commencement of his employment in May 2008. Throughout his employment he had accepted that black slacks and shoes were part of his uniform and that this part of his uniform would be paid for and supplied by him. He alleges that in or around November 2010 a zip on his trousers broke. He asked his employer if he could wear jeans and runners that day and as a short term solution to the issue with the zip, this was agreed. However, he was expected to either fix the trousers he had or buy new ones. He informed his employer that he could not afford new trousers. When asked why he had not reverted back to wearing his uniform, he was told that his employer would purchase the new trousers for him and that he could repay them in small instalments. Again, this offer was not taken up. He did not get the zip fixed or buy new trousers despite instructions to do so. He was insistent that unless his employer supplied him with new trousers at their expense he would not be wearing them, and indeed, he refused to wear black shoes either. He continued to wear jeans and runners up to the date of his dismissal.

The claimant received a number of formal warnings from 16th November 2010 for refusing to wear his uniform and was eventually dismissed for continuously refusing to follow a reasonable management instruction.

The claimant's case is the he indicated that he was willing to wear the uniform provided but that he was not willing to spend his money buying items of clothing and shoes to wear with the uniform.

Determination:

On careful study of all the documents presented to the Tribunal by both parties, the Tribunal is satisfied that the employee handbook which referred to uniform requirements should have been given directly to the claimant with the written statement of his terms of employment if it was intended that the employee handbook formed part of the contract/written statement.

For this reason the Tribunal finds that the dismissal was technically unfair.

On further consideration of the exchange of the documents between the parties it is also clear to the Tribunal that the claimant could and should have taken a more reasonable approach to addressing the problem. The Tribunal is of the view that the claimant made a very substantial contribution to the dismissal.

In assessing compensation the Tribunal must have regard to the claimant's major contribution to the dismissal which is reflected in a reduced award.

In the Tribunal's view the sum of €5,000.00 "is just and equitable having regard to all the circumstances" under Section 7(1) (c) of the Unfair Dismissals Act 1977.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)