

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE
(*appellant*)

CASE NO.

UD1676/2011

WT666/2011

MN1733/2011

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

EMPLOYER

,
(*respondent*)

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Mac Carthy S C

Members: Mr. B. Kealy
Ms M. Maher

heard this appeal at Dublin on 5th February 2013

Representation:

Appellant: In person

Respondent:

Background:

This case is before the Tribunal by way of an employee appealing a Recommendation of a Rights Commissioner ref: r-108656-ud-11/EH under the Unfair Dismissals Acts, 1977 To 2007. The employer being the respondent and the employee being the appellant. The respondent is a security company and the appellant worked as a security guard.

The claim under the Organisation of Working Time Act, 1997 and the Minimum Notice and Terms of Employment Acts 973 to 2005 were withdrawn.

The Tribunal heard that the appellant was a student on a student visa that had to be renewed each

year. He came to Ireland in 2006. The respondent wrote to him in November 2010 advising him that his card would expire in December and it was his responsibility to renew it.

Three months are given to renew the visa but in December 2010 he was told by GNIB that a new immigration policy was being introduced on 1st January 2011 and to wait for the changes. It was the appellant's evidence that through no fault of his own the visa was not given until 23rd March 2011. He stated that he did not receive correspondence from the respondent but that he faxed a copy of his visa to the respondent on 7th April. His employment was terminated by letter on 6th April.

It was the respondent's case that they had written to the appellant and tried to contact him on a number of occasions. They advised him that he could not be kept in employment after 8th March and had no idea what was happening. It was only after the termination letter that they got a copy of his visa.

Determination:

With regard to all the circumstances the Tribunal allows the appeal under the Unfair Dismissals Acts, 1977 to 2007, and upsets Rights Commissioner Recommendation r-0108656-ud-11/EH. However, the Tribunal has to take into account the level of contribution that the claimant made to his dismissal. The respondent had a responsibility to ensure that visas/work permits were in order and the claimant had a duty to keep his employer updated and informed.

Under section 7 of the Unfair Dismissals Acts 1977 to 2007 compensation is to be "*just and equitable having regard to all the circumstances*".

The Tribunal therefore awards the claimant the sum of €2,000.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

