

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE
– *claimant*

UD1424/2011

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: Mr P. O’Leary

Members: Mr D. Moore
Mr J. Flannery

heard this claim at Trim on 28th January 2013

Representation:

Claimant:

Respondent:

The determination of the Tribunal is as follows:

This case came before the Tribunal as an appeal by an employee of the recommendation of the Rights Commissioner under the Unfair Dismissals Acts 1977 to 2007 reference number r-099592-ud-10/RG.

Respondent’s Case

The general manager gave evidence. It was reported to him that the appellant, while on paid sick-leave was working as a bouncer at a local pub. The general manager felt that it was a serious matter that someone on paid sick-leave following an accident at work was working elsewhere. The appellant was prevented from working elsewhere, without the respondent’s permission, by an explicit clause in his contract of employment.

The general manager phoned the appellant and asked him to attend a meeting. The appellant was informed that he could bring a representative with him. The tanker division manager also

attended the meeting. The general manager asked the appellant if he was working elsewhere. The appellant said that he was working as a bouncer. He did not see this as a problem but offered to stop immediately.

Four or five days later the general manager called the appellant to a second meeting. He informed the appellant that his employment was ceasing, his mobile phone should be returned and all outstanding money would be paid. The appellant was given a right of appeal but he did not avail of it.

The tanker division manager gave evidence that one evening on his way home; he saw the appellant working as a bouncer at a local pub. The tanker division manager knew that the appellant worked there. On the following Monday he told the general manager what he had seen. The tanker division manager decided to tell the general manager at that time because the appellant was on the sick.

At the first meeting the appellant admitted under pressure that he worked as a bouncer one night a week. The appellant was offered representation at that meeting.

The tanker division manager was not involved in making the decision to dismiss the appellant.

Appellant's Case

The appellant gave evidence. He worked for the respondent for 3 years. Before the incident that led to his dismissal he had only one disciplinary issue when he got out of a truck without wearing a helmet. The HR manager dealt with that issue.

The appellant was surprised that the HR manager was not in attendance when he came to the meeting with the general manager. The HR manager had sent him a text telling him of the meeting. He told the general manager that he worked on the door of a pub. He had always worked there and did not realise that it was an issue for the respondent. He offered to phone the pub and tell them he would not work there again. He had not been offered representation at the meeting.

The appellant was on sick leave because he had hurt his back while working for the respondent. The job at the pub allowed him to walk around or to stand against a wall. He had been unable to climb a ladder or sit long periods. He felt that he complied with the exclusion clause in his contract because he did not drive a truck for anyone but the respondent. Also he was not working for a competitor of the respondent.

When he was dismissed the appellant was gobsmacked. He did not appeal the decision because he felt that the general manager's decision was final. His first priority was searching for a new job as soon as he was certified fit to work.

Determination

The Tribunal carefully considered the evidence adduced. When the general manager became aware of an issue with the appellant it would have been good practice to write to the appellant outlining the issue and informing him of his right to representation at the investigation meeting. The general manager conducted the investigation and then made the decision to dismiss the

appellant. Good practice would entail a separation of these functions. It also appears that the tanker division manager had known that the claimant had always worked part time in the pub and had only informed the general manager because the appellant was on sick leave. A worker may be unable to perform his main function while being able to perform a part time function. This aspect of the case was not considered by the respondents in making their decision.

The Tribunal finds that the procedures used to dismiss the appellant were inadequate and therefore the appeal under the Unfair Dismissals Acts 1977 to 2007 succeeds. The actions of the appellant contributed to the situation in which he found himself. The appellant is awarded the sum of €5000.00. The recommendation of the Rights Commissioner is upset.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)