

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

UD1733/11

- appellant

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: Ms N. O'Carroll Kelly BL

Members: Mr L. Tobin
Mr. A. Butler

heard this appeal at Wicklow on 4th April 2013.

Representation:

Appellant:

Respondent: No appearance by or on behalf of the liquidator.

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of the appellant appealing against the recommendation of the Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007 (ref. r-107067-ud-11/JW).

Appellant's Case:

The appellant commenced work as a sky installer on 15th October 2007. He was afforded training in on the job over a two week period and subsequently another employee helped train him over a two month period.

He signed his terms and conditions of employment on 1st November 2008.

The appellant received a list of jobs on a day to day basis and would travel to customer sites to service satellite TV dishes and equipment. He had to complete five specific jobs each day and sometimes many more. If he did not complete the five jobs money would be deducted from his salary. If he hit his target he was given a bonus.

On 25th January 2011 he called to a bungalow to check on a signal problem. He spoke to the resident. A satellite dish was already in place which was located next to the chimney. There was an intermittent signal problem with the box located in the kitchen. He was told that when it rained the signal was lost. He ascertained that there was a problem with the cable and that it must be outside the house. He thought the problem lay with the satellite dish.

He parked his van beside the house and put the ladder up the side of the house. He was able to climb onto the roof and across to the dish without the aid of the ladder. A roof ladder would have been too far away from the point he wanted to get to. It was not very steep. He thought that it was safe to do so. He wore his safety boots. He carried his tools in his pocket. He noticed that the cable was rusty. He put in a new connector. The job took about five minutes to complete.

The appellant attended a disciplinary hearing on 2nd February 2011. At that hearing he was told that he should have placed the ladder on the roof and that he could have killed himself and that he could not be trusted again. The appellant apologised. He did not wish to lose his job and said he would never climb a roof again without the aid of a ladder. He was dismissed from his employment and appealed that decision. The decision to dismiss him was upheld.

The appellant had not previously been disciplined by the company and had never received any warnings. He has applied for many positions since the termination of his employment but has not secured alternative work.

Respondent's Case:

No evidence adduced as the liquidator was not present at the hearing.

Determination:

The Tribunal considered the evidence adduced the hearing. The Tribunal finds that decision to dismiss the appellant was disproportionate considering the appellant had no disciplinary record.

The Tribunal notes that the appellant has not secured alternative employment since the termination of his employment despite applying for many positions.

Based on the appellant's uncontested evidence the Tribunal finds that the appellant was unfairly dismissed and awards him €20,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)