

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYER *-appellant*

CASE NO.  
UD1746/2011

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

EMPLOYEE *-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. Clancy

Members: Mr G. Andrews  
Mr F. Dorgan

heard this appeal at Limerick on 12th June 2013

#### **Representation:**

Appellant: In Person

Respondent:

This case came before the Tribunal by way of an employer appeal of the Rights Commissioner Recommendation **ref: r-100327-ud-10**. Hereinafter the appellant shall be referred to as the employer and the respondent the employee.

#### **Appellant's (employer) Case**

The Operations Manager (GL) gave evidence. GL was made aware that there had been an incident involving the employee on the 2<sup>nd</sup> of December 2009. The employee entered a client office wearing a motorcycle helmet. This is strictly against the security policy. This client is a large and important client of the employer's. The employee's supervisor rang GL to tell her about him wearing the helmet, the employee then made physical threats to the supervisor leading them to remove the employee from the premises. A replacement was sent to the site to cover the employee. The following day the client requested a meeting with the employer. At that meeting they made it clear that following the incident they would not accept the employee on site again.

The employee was contacted and asked to come to a meeting to give his side of events. No allegations were put to the employee at this meeting. GL then engaged in extensive communication by phone and e-mail with McE from SIPTU regarding the situation with the

employee.

The employee did not have the skills for the work the company had available i.e. CCTV and computer work. The construction based contract the employee had been employed for had expired. The employee was not offered redundancy at this time. The only work available for the employee was a 2 hour shift 5 days a week with the client who now refused to accept him on site. Training and up-skilling is provided for suitable employees.

The employer wrote to the employee on the 26<sup>th</sup> of March inviting him to a disciplinary meeting on the 7<sup>th</sup> of April 2010. The employee was informed that he could bring a representative to this meeting. The following issues were to be discussed at the meeting:

*'The incident which occurred at the (customer office) at Sarsfield House on the 2<sup>nd</sup> of December 2009.*

*Your demeanor, attitude and behaviour during the course of the investigation into the incident while you were present at (the employers) offices.'*

The employee did not attend this meeting or attempt to communicate with the employer.

A further letter was sent to the employee on the 22<sup>nd</sup> of June 2010 arranging a disciplinary meeting for the 30<sup>th</sup> of June 2010. The above details were again contained in the letter. The employee did not attend this meeting or attempt to communicate with the employer.

The employee's union representative wrote to the employer on the 5<sup>th</sup> of July. The employer responded informing her that the employee had not attended either of the disciplinary meetings organised. By letter of the 10<sup>th</sup> of August the employer conveyed all this information to the Union representative. In an effort to resolve the issue the employer proposed another meeting on the 23<sup>rd</sup> of August 2010.

After this meeting on the 23<sup>rd</sup> of August the employer made the decision to dismiss the employee for Gross Misconduct on the following grounds:

*'For conduct unbecoming of a professional security officer while on duty ...during which you refused to carry out instructions issued by a site supervisor, engaged in a verbal altercation with him and the manner in which you behaved, causing him to fear for his safety and well-being.'*

*Your attitude, behaviour and demeanour towards a member of (the company) during the course of the investigation being carried out subsequent to the incident and during which you were advised that failure on your part to desist from intimidation and unwarranted behaviour, would result in the Garda Siochana being summoned.'*

The letter of dismissal is dated the 27<sup>th</sup> of August 2010. The right to appeal this decision is also contained in the letter.

## **Respondent's (employee) Case**

The employee worked on many different sites since he commenced employment in September 2004. In December 2009 his hours were reduced from full-time down to a 2 hour shift 5 days a week. He was not offered redundancy. The employee was in contact with his Union to clarify the position regarding the hours of work available for him. The employee would have undergone any training proposed for alternative positions.

On the 2<sup>nd</sup> of December 2009 the employee entered the client's premises with his motor cycle helmet still on. His supervisor approached him, an argument ensued and both raised their voices. There was a bad atmosphere between the employee and his supervisor and the only witness to the incident was the supervisor's cousin who worked there as a cleaner. There was no reason for the supervisor to feel threatened, if left alone they would have worked the situation out.

The employee was suspended two days later at the investigation meeting on the 4<sup>th</sup> of December 2009. During that meeting the employee was informed that it was a minor incident that could be sorted out locally between the employee and the supervisor. As far as the employee was concerned it was over and the only issue of concern remaining was the number of hours of work available for him.

The employee did not receive the employer's letter of the 26<sup>th</sup> of March 2010 as he had instructed that all correspondence go to his Union representative. The employee did attend the meeting on the 23<sup>rd</sup> of August 2010 to try and explain the background between him and his supervisor. This was a five minute meeting, there were no witness statements or any documentation put to the employee. The employee was informed of the decision to dismiss him in the dismissal letter of the 27<sup>th</sup> of August 2010.

## **Determination**

The employer did not follow fair procedures during the disciplinary process, the employee was not given sufficient opportunity to respond to the allegations and the respondent delayed unduly. The employer failed to provide sufficient evidence to prove the dismissal was fair.

The Tribunal find that the appeal of the Rights Commissioner Recommendation **ref: r-100327-ud-10** fails. The Tribunal affirms the Rights Commissioner Recommendation and awards the employee €5,000.00 as compensation under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)