

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:
EMPLOYER ,

-appellant

CASE NO.
UD461/2012
TE65/2012

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

EMPLOYEE *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B. L.

Members: Mr. M. Flood
Mr C. Ryan

heard this appeal at Dublin on 21st June 2013

Representation:

Appellant:

Respondent:

This case came before the Tribunal by way of an employer appeal of the Rights Commissioner Recommendation **ref: UD75348/09/MR** under the Unfair Dismissals Acts 1977 to 2007 and **ref: TE75352/09/MR** under the Terms of Employment (Information) Acts, 1977 to 2007. Hereinafter the appellant shall be referred to as the employer and the respondent the employee.

Respondent's (employee) Case

The employee gave evidence with the aid of an interpreter. The employee did not receive a contract containing all the specifics as prescribed in the Acts.

The employee worked as a driver for the company from 2006. The employee was building a house in his native country. In 2008 the employee needed to return home for 6 weeks as there had been some problems with the house. He explained the situation initially to the Operations Manager (JD) who said he could not authorise the absence but instructed him to ask the Transport Manager (RS). This conversation took place in or around July 2008.

The employee then requested permission from RS for an absence from the 1st of October 2008 to the 15th of November 2008. This was granted by RS with the request that the employee give

two weeks' notice of his return to work. An agency driver had been doing some temporary work for the company, so the employee organised that this agency driver would replace him while he was away. The employer did ask the employee to wait until the quiet period in January before leaving but as he had found them a replacement driver, he did not think his absence would be a problem.

The employee contacted the employer to return to work. He was then informed that things were quiet and they no longer needed his services. The employee did not receive any prior notification or any documents regarding his employment termination. The employee had to request his P45 from the tax office. The employee did not resign.

The employee was on week's holidays from the 20th to the 27th of September 2008. When he returned to work for the 2 days before leaving for 6 weeks, the employer asked him what he was doing back. The employee did not ask for 2-3 months off. The employer did not ask the employee if it would not make more sense to employ a painter, rather than take 6 weeks off.

Appellant's (employer) Case

The Operations Manager (JD) gave evidence. The employee approached JD a number of weeks before his departure and asked for 3 months off. JD said it was a busy time and asked could he wait until after Christmas. JD then informed him that if he had to leave there was no way they could hold his job open for him. The employee said that he definitely had to go. JD informed the employee that he did not have permission to go but to double check with RS. When the employee did not appear for work the employer knew that he had chosen to leave.

An employee would never organise their own replacement; there are standards and security checks in place. The employer deals directly with the agencies if they require staff. This was not an unauthorised absence, the employee left his employment. The employer did not ask for a resignation letter.

The employee did contact JD in December 2008 requesting to come back to work. JD was surprised as he had left his employment.

The Transport Manager (RS) gave evidence. JD had informed RS of the employee's request. The employee approached RS in August 2008 and informed him that there was an issue with his house so he needed to return home for 2-3 months. RS explained that the employer could not afford to lose a driver for 2-3 months so if he left his job was gone. RS asked the employee to wait until after Christmas; the employee did not. As the employee had said he was going home to paint his new house, the employer had suggested hiring a painter as that would be cheaper and he would remain in employment.

The employee did not arrange his replacement; it is RS's job as transport manager to engage any drivers in employment.

The employee called RS in December saying he wanted to come back to work. RS explained that he had left his employment and had been replaced. RS was surprised that the employee called as there was no ambiguity regarding the end of his employment. It was an amicable parting; they shook hands and RS wished the employee the best of luck in the future.

Determination

The Tribunal dismisses the employer appeal of the Rights Commissioner Recommendation **ref: TE75352/09/MR** under the Terms of Employment (Information) Acts, 1977 to 2007. Therefore the Tribunal affirms the Rights Commissioner Recommendation to award the employee €1,500.00 in compensation.

Having listened carefully to the evidence adduced by both parties the Tribunal are satisfied that the employee left his employment voluntarily. The appeal of the Rights Commissioner Recommendation **ref: UD75348/09/MR** under the Unfair Dismissals Acts 1977 to 2007 succeeds. The Tribunal therefore upsets the Rights Commissioner Recommendation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)