

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE - *appellant*

CASE NO.
UD551/2010

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. M. Quinlan

Members: Mr. G. Andrews
Mr. M. O'Reilly

heard this appeal in Dublin on 27th July 2011

Representation:

Appellant: Ms Bernadette Thornton, SIPTU, Membership Information &
Support Centre, Liberty Hall, Dublin 1

Respondent: Mr. John Barry, Management Support Services (Ireland)
Limited, The Courtyard, Hill Street, Dublin 1

This appeal came before the Tribunal by way of the employee (the appellant) appealing against the decisions of the Rights Commissioner under the Unfair Dismissals Acts, (ref. r-078293-ud-09/RG).

The determination of the Tribunal was as follows:-

Appellant's Case:

The appellant gave evidence. He had been employed with the respondent company since January 2005 as a driver/helper. The company has storage and distribution divisions. The appellant worked as a van helper on the distribution side, cigarettes/tobacco.

On the 9th January 2009 a letter issued to employees stating that the tobacco contract had been lost and that possible compulsory redundancies would have to be considered. A 30 day consultation

process followed.

A works committee was in place in the company but the appellant never participated in it. He was not aware of how it had been set up and had no dealings with them. The appellant was advised by letter on 10th March 2009 that he had been selected for redundancy. He thought the criteria was first in last out so did not appeal the decision.

He did advise his trade union of what was occurring at the company and presumed everything was above board.

There was a delay in the appellant receiving his redundancy cheque and on the day he called to collect it he met and spoke with a colleague. His colleague asked him if he was there for interview. The appellant was told that interviews were taking place for van helpers.

He believed that five additional people had been hired, two who had already worked for the company and who had less service than himself.

Under cross examination the appellant was asked about various meetings that had taken place and minutes that were put on the staff notice board. He said he was aware of a notice board in the building but did not look at it. Asked if he made an appeal of the decision regarding his redundancy he stated that he told his supervisor that he was rejecting his redundancy

ST gave evidence on behalf of the appellant. He worked as a driver for the company for five years but had left in 2007. At the time of his departure he stated that the works committee was in existence but drivers/helpers did not recognise it.

Respondent's Case:

The Human Resource Manager (HR) gave evidence. She began working for the company in July 2007 and instigated the setting up of a works committee. All employees were asked who they would like to represent them. A committee was made up of people nominated by staff. When nominations were received a ballot followed. The committee had a signed agreement with the respondent company and could negotiate procedures. A number of staff were trade union members and some would have sat on the works committee, there were no issues.

At no time was she aware that the committee was not representing the appellant.

HR explained that the company had two separate divisions. When the tobacco contract was lost a meeting was held with all employees. Employees were advised of the position and that redundancies would be required. HR herself was there to answer any questions that arose and to explain the process.

Following the meeting a letter was received from the trade union advising of first in last out criteria and also stating that members should be allowed to appeal any decision they thought was unfair. This criteria was being applied by the respondent company so no response issued.

At no time was an appeal received from the appellant.

A full notice board was provided for the redundancy situation and minutes of all meetings, FAS information, etc were placed on it.

Two people were retained on the tobacco side of the business. They were the drivers with the most service.

Following the dismissal of an employee a job did become available. It was advertised on-line and on the office notice board. Four people were short listed for the position and one former employee was successful. The appellant did not apply for the post.

Under cross examination HR stated that all meetings were at a time when all employees could attend, usually when all drivers and helpers were back on site. On occasion the depot was kept open to make sure everybody was there.

Determination:

The Tribunal finds that Fair procedures were followed by the respondent regarding the dismissal of the appellant. The Tribunal finds that the dismissal was not unfair. Accordingly, the appeal fails and the Recommendation of the Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007 (reference: r-078293-ud-09/RG) is upheld.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____
(CHAIRMAN)

