

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**

Employee

**CASE NO.**

MN622/08  
UD682/08

**Against**

Employer

**under**

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001  
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr D. Mahon B.L.

Members: Mr F. Cunneen  
Mr. N. Broughall

heard this claim at Naas on 14th November 2008.

**Representation:**

Claimant : Mr. Ed Kenny, Assistant Branch Secretary, SIPTU, Security Services  
Branch, Liberty Hall, Dublin 1

Respondent : Reidy Stafford, Solicitors, 1-3 Moorefield Terrace,  
Newbridge, Co Kildare

The determination of the Tribunal was as follows:-

**Claimant's Case:**

The claimant gave evidence. On 21<sup>st</sup> January 2008 he received a phone call from the Operations Manager asking him to attend a meeting the following day. He could not recall if he was told in advance the purpose of the meeting. He believed his reluctance to sign a new contract of employment and the matter of returning screening documents to the respondent would be discussed. At that meeting the Operations Manager told him that he had requested another member of staff to be present to act as a witness to the proceedings. The claimant requested the meeting be adjourned and rescheduled to afford him the opportunity to have his own witness present.

Later that day he received a letter from the Operations Director requiring him to submit to him before 16.30 hrs. on 25<sup>th</sup> January 2008 a doctor's certificate to cover his absence for a period of seven days from the office and completion of all screening documents for compliance with

he Private Security Authority. He did not complete the documents. The deadline passed and he did not think it would be a major deal.

The re-scheduled meeting did not take place until two days later. The Team Administrator was nominated as the claimant's witness. The Operations Manager asked the reasons why he had not signed his contract of employment. The claimant asked him for the company handbook and was told it was not available but would be in the future. The claimant asked if the contract was a legal document and advised that he was unhappy that he was expected to sign it without seeing the company handbook.

Subsequently he signed the contract of employment but felt it was not worth the paper it was written on. He felt under pressure and that his job was in jeopardy.

Before his shift ended on 26<sup>th</sup> January 2008 the Operations Director spoke to him and asked him for the relevant documents. The Operations Director told him that he had no choice but to dismiss him and his employment was terminated that day. The claimant enquired about his holiday pay and a severance payment. The claimant was asked for his company ID card and he passed it to the Operations Director. He was also asked for his uniform jacket but he did not give it, as he had no other jacket with him that day. He was not issued with a P45 form.

After that the claimant's Trade Union got involved in discussions with the company and he was re-instated on 3<sup>rd</sup> March 2008.

On 27<sup>th</sup> March 2008 the claimant was asked to attend a disciplinary meeting with the Managing Director. They shook hands and sat down. The Managing Director set out the facts and invited the claimant to respond. The hearing lasted approximately 15 minutes. The Managing Director concluded at the end of the meeting that he was left with no option but to dismiss the claimant. He was afforded the opportunity to appeal this decision.

On 10<sup>th</sup> April 2008 the claimant received a cheque for €288.00 for his outstanding holiday pay and his P45.

Under cross-examination the claimant said he received his new contract of employment in December 2007 and his screening documents but had not returned them. The respondent had the right to vary the location of his place of employment and reserved the right to relocate an employee abroad while being paid the same wages. The claimant was quite unhappy with this clause in the contract of employment. He had originally given the respondent his CV and he deemed this to be sufficient for completion of documents. He said he had completed the necessary training and secured the Security Guard Licence on 15<sup>th</sup> February 2008. He did not inform the company that he had secured the licence. It did not occur to him.

The claimant told the Tribunal that he had informed the Operations Director that he had issues with the contract of employment.

The claimant told the Tribunal that he liked his job but he felt he could not work for the respondent because he was under the illusion that if he signed the contract of employment he could be sent anywhere to work. He found management difficult to talk to, the company's procedures were lax, and he found the Operations Director to be evasive.

The claimant established loss for the Tribunal. He had not worked since he was dismissed on 3<sup>rd</sup>

April 2008. While he had signed up for jobs on the website he was informed that he lacked the proper qualifications.

### **Respondent's Case:**

The Managing Director gave evidence. The respondent employed 350 staff. The respondent provided security in Ireland and abroad.

In October 2007 the respondent applied for a Private Security Licence. They secured a six-month provisional licence. Vetting documents were required to be completed for the Private Security Authority and for an Insurance Policy.

Individual employees are also required to obtain a relevant Private Security Authority licence as a requirement for employment. The law requires the necessary forms to be completed within twenty weeks of the employee's commencement.

The Managing Director became involved in the process. Following the respondent's engagement with the claimant's union and the claimant's re-instatement, the Managing Director wrote to the claimant on 12<sup>th</sup> March 2008 offering to explore every opportunity to resolve matters amicably. He did not receive a response to this letter.

The Managing Director attended an informal meeting with the claimant and his union representative on 27<sup>th</sup> March 2008. The claimant brought the new contract of employment already signed to that meeting. The Managing Director tried to find a solution and enquired why he did not receive a response to his letter of 12<sup>th</sup> March 2008. The claimant said there was no point in talking to management. He offered no explanation as to why he would not complete the vetting documents. At that time the Managing Director did not know that the claimant had secured his own security guard licence.

Following that meeting it became very clear to him that the claimant would not sign the vetting documents. The Managing Director was left with no option but to dismiss the claimant. The claimant was dismissed on 3<sup>rd</sup> April 2008.

Under cross-examination the Managing Director said he had difficulties contacting the claimant as he had moved address. He would have been happy to receive an explanation from the claimant as to why he would not complete the relevant documents. He offered the claimant €500 for expenses he was owed. He said if the claimant had complied with the completion of the necessary paperwork he would have kept him on. The company had been left with no option but to dismiss the claimant.

The Managing Director said that the only difference between the old and new contract of employment was one sentence added, "All employees must obtain a relevant PSA licence as a requirement of employment. Failure to do so will result in termination of employment".

The Managing Director told the Tribunal that even if an individual held a security guard licence the company still needed the individual to complete the vetting documents, which were a requirement for the Private Security Authority.

**Determination:**

The Tribunal carefully considered all of the evidence adduced at the hearing. The claimant's refusal to sign vetting documents required by the Private Security Authority frustrated the respondent's ability to employ him. It was in the claimant's own interest to complete the required documents. The claimant had been reminded on several occasions of the importance of signing the documents and of the respondent's responsibility in this regard. As it is a highly regulated industry an onus lay on the respondent to adhere to the requirements of the Private Security Authority regulations. The members of the Tribunal noted with concern that company procedures fell short of acceptable standards in the context of modern industrial relations and good HR practice.

Having regard to all of the circumstances the Tribunal finds that the dismissal of the claimant without notice was not unfair. Therefore, it is the unanimous determination of the Tribunal that the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and the the Unfair Dismissals Acts, 1977 to 2001 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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