

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

WT219/2008
UD504/2008

against

EMPLOYER

under

ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms C. Gleeson B.L.

Members: Mr. J. Reid
Ms. C. Byrne

heard this claim at Dublin on 4th December 2008
and 22nd April 2009
and 21st January 2010

Representation:

Claimant(s): Mr Stephen Reel, Brian Berrills & Co, Solicitors,
5 Francis Street, Dundalk, Co Louth

Respondent(s): No representation on 4 December 2008
Mr. Ciaran MacLoughlin BL instructed by A.C. Pendred & Company,
Solicitors, Derrynane House, 77 Lower Dorset Street, Dublin 1 on 22 April
2009
No representation or attendance by or on behalf of the respondent on 21
January 2010

The determination of the Tribunal was as follows:-

Respondent's Case:

The Operations Manager (hereafter known as JG) gave evidence. He originally interviewed and hired the claimant in June 2006. The witness explained that the claimant signed his contract before he commenced employment but understood the contents of it. The witness trained the claimant in the duties he was required to carry out and gave him a copy of the company's code of conduct.

At the resumed hearing on 22 April 2009 JG told the Tribunal that he could not furnish information in relation to other employee's rosters as the respondent's licence could be suspended. He worked

on 17 March 2008. He had a heated argument with the claimant on that day and he wanted him sacked. The claimant was found asleep three times and the claimant would not go to the office. The claimant had no regard for health and safety. The claimant was given verbal and written warnings at the respondent's office, which was located in Tallaght. The majority of staff reported to the Tallaght office and a minority went to the Smart office. The claimant was given a written warning on 12 September 2007. The claimant received a written warning on 30 November 2007 the day that the second incident occurred. He issued a third and final written warning to the claimant on 18 March 2008. The Managing Director told him to advise the claimant he was suspended with pay until an investigation was carried out but to attend work within seven days. The claimant did not report for work after this even though the witness tried to contact the claimant on numerous occasions. The witness undertook the investigation and spoke to several supervisors and other staff.

He stated that FD told the claimant about a disciplinary hearing. The claimant did not attend a disciplinary hearing. He could not recall if the claimant was sent a letter informing him of the disciplinary hearing. The procedure in place when the respondent received a complaint was the employee was asked to report to the office in Tallaght the next day. Having consulted the Managing Director he contacted the claimant and informed him that he was dismissed because of gross misconduct and breach of company policy.

RG on behalf of the respondent told the Tribunal that he was a taxi driver and undertook work for the respondent. On one occasion he delivered documents to approximately twenty five to thirty houses. Some houses were unoccupied and he met the occupants of some houses that he delivered documents to. In some areas he found it difficult to gain entry

In cross-examination he stated that there was no response when he called to some houses. He was unsure of the date he delivered the documents. He could not be sure that he delivered a document to the claimant.

In re-examination he stated that on a couple of occasions he was given a log. He provided a receipt for the fare.

Claimant's Case

A witness on behalf of the claimant OO told the Tribunal that he was employed with the respondent from 2006 to 2008 in full time security. He was not given a contract of employment. From 16 to 17 March 2008 he worked in a site where the claimant worked. The claimant worked in gate one and the witness worked in gate three. He worked from 16 March 2008 p.m. until 17 March 2008 a.m. When he reported on night shift he clocked in with a swipe card. The claimant was at gate one and he collected the swipe card from him. At 6a.m. after his duty he heard movement behind him and someone told him it was his boss. The person he saw was DOF. DOF collected his radio and asked him to take him to gate one. The claimant was supposed to be at gate one. The light was on in the hut and he could see the claimant's side view. The claimant was not asleep and he sat upright in a chair. Both the witness and DOF approached the hut together. He could not see the front of the claimant's face. DOF told the claimant that he was asleep and the claimant denied this. The witness was behind DOF. DOF told the claimant that he was sacked. OO told DOF that the claimant had finished his work. The last time he saw the claimant was at approximately 6a.m. when he finished work.

The claimant gave him a swipe card and every four hours the swipe card was exchanged. DOF

collected the witness's handset and DOF followed them. DOF told the claimant to report to the office and collect his letter. The witness stated that DOF gave him his business card and he had the power to sack anyone.

In cross-examination he stated that the swipe card was exchanged every three to four hours and passed on to the next person. He got the swipe card at 6p.m. and he knew everything was in order. DOF used his leg to open the door to the hut where the claimant was. OO did not sign terms and conditions of employment and he signed a licence. On the 16 March 2008 he worked in site B. When he was asked if his name was not on the roster for this site on 16 March 2008 he replied each employee had his own roster and employees worked in many sites. He was certain that he worked in site B that night as someone had damaged his car. OO left the respondent's employment and he found alternative employment.

The claimant told the Tribunal he commenced employment with the respondent on 10 August 2006.

He was not given written terms of employment and he was never asked to sign anything. An incident occurred on 16/17 March 2008 while he was undertaking work on site B. He was in a hut and was in the patrol area. He was on patrol duty every hour and radio checked the head office. On 16 March 2008 he was finished with the zapper at 4a.m. and did a radio check at 5a.m. He heard a noise outside his hut at 5.20a.m. and DOF opened the door. DOF was a member of the respondent company who owned the site and he undertook work with the respondent as well. DOF alleged that the claimant was asleep. The claimant told him that he put the light on, as he could not see outside. DOF told him that he was sacked and he told the claimant that he should go to the office at 10a.m. The claimant asked DOF to check his records. He did not hear anything further from his employer. The claimant did not receive any letters and he had no further contact with FD. He was not asked to attend an investigation.

After he was dismissed he endeavoured to obtain alternative employment and has obtained some part time work.

In answer to questions from the Tribunal he stated that he was a good employee. He stated that it was a dismissible offence if employees were found sleeping at work but that employees who were found asleep on the job were not sacked. He agreed that his signature was on a contract of employment, which was presented to the Tribunal. No written terms of employment were in place when he commenced employment with the respondent. He received holiday pay for one week and he was entitled to payment for two weeks holidays.

Determination

The Tribunal finds that the claimant was unfairly dismissed and in the absence of any evidence to the contrary the claim succeeds. The Tribunal awards the claimant compensation of €12,000 under the Unfair Dismissals Acts, 1977 to 2007. The claimant is entitled to one weeks holiday pay in the amount of €202.00 per week under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

