

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE - **Claimant**

UD1161/2009
RP1352/2009
MN1174/2009
WT520/2009

against

EMPLOYER -**Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. S. McNally

Members: Mr. D. Hegarty
Mr. J. Flavin

heard these claims at Cork on 26 May
and 20 July 2010

Representation:

Claimant:

Mr. Byron Wade B.L. instructed by Mr. Don Ryan,
Don Ryan & Co. Solicitors, 9 Westbourne Place, Cobh, Co. Cork

Respondent:

CEO of the respondent

The determination of the Tribunal was as follows:

The claimant, who had worked on the site since 1978, was employed as a security guard from December 2003 and, following a transfer of undertakings, by the respondent, a provider of security services including security guards, from April 2006. The employment was uneventful until some time in December 2008 when the respondent, which has some 500 employees, decided to reduce the number of hours for which the claimant and his three colleagues at the site were employed from 42 to 36 per week. This was in order to accommodate other employees employed on contracts that the respondent had lost.

The claimant was unhappy about this reduction in hours, which was to be implemented from early January 2009, considering that the respondent should not unilaterally implement the reduction in hours. On Saturday 3 January 2009 the claimant came to work for the night shift to relieve his colleague (HC). Whilst there is a dispute between the parties as to the precise events, which occurred between the claimant and HC, it is accepted that the claimant accused HC, who had previously been employed in a supervisory capacity, of being a “lapdog” of the respondent. The respondent’s position is that HC remained in the security hut (the hut) until the claimant arrived, whereupon the claimant began to shout at him. The claimant’s position is that HC was some 30 yards away at his car when the claimant arrived at the hut and it was necessary for the claimant to raise his voice to make contact with HC who chose to ignore what the claimant said to him. It is common case that HC was so concerned at what the claimant said to him that he complained to the area supervisor (AS) about the claimant’s conduct. The respondent’s case is further that when HC next returned to work there were unflattering remarks from a calendar stuck on the notice board in the hut. Whilst HC believed that the claimant was responsible for this, the claimant denied any involvement in this matter.

On Saturday 10 January 2009 the claimant, who was due to work the day shift that day, entered into an arrangement whereby a second colleague (SC) worked the Saturday shift and the claimant worked the following Wednesday 15 January 2009 night shift. On 12 January 2009 AS wrote to the claimant mentioning the incidents of 3 and 5 January as well as an incident on 2 January 2009 that were under investigation. The claimant was invited to an investigation meeting with AS on 14 January 2009. He was warned that as it may result in a disciplinary hearing he could attend with a representative of his choice.

On 15 January 2009 the general manager of the respondent wrote to the claimant in reference to the meeting of the previous day at which another colleague accompanied the claimant. This letter mentioned that the claimant was now accused of being absent from rostered duty on 10 January 2009. The claimant was notified of his dismissal with immediate effect for verbal abuse of HC and for absence from assignment without authority. He was advised of his right of appeal to the CEO of the respondent. CEO heard the appeal on 27 February 2009 and the claimant was informed of the rejection of his appeal in a letter from CEO dated 6 March 2009.

Determination:

At the outset the claims under both the Redundancy Payments Acts and the Organisation of Working Time Act, 1997 were withdrawn.

The only witness proffered by the respondent was HC and this enabled the Tribunal to hear evidence from both protagonists to the incident of 3 January 2009. Whilst there was a conflict of evidence about this incident the Tribunal is satisfied that the actions of the claimant in that incident did not amount to gross misconduct such as to justify dismissal.

No evidence was heard from AS who conducted the 14 January meeting as a result of which the decision was taken to dismiss the claimant and the Tribunal was shown no notes of this meeting. One of the reasons the respondent stated for the dismissal of the claimant was his alleged absence without authority on 10 January, something of which he was given no warning before the 14 January meeting. Furthermore the Tribunal is satisfied that it was the practice of the claimant and his colleagues at the site to swap shifts on an informal basis. At best the respondent showed

perfunctory adherence to procedures.

The Tribunal is satisfied that the dismissal of the claimant represented a disproportionate penalty and for all these reasons the Tribunal is satisfied that the dismissal was unfair. Whilst the claimant sought reinstatement the Tribunal is satisfied that the claimant's remarks to HC on 3 January 2009 were the catalyst for his dismissal and that this represents a level of contribution to the dismissal such that reinstatement would not be appropriate.

The Tribunal awards €4,000-00 under the Unfair Dismissals Acts, 1977 to 2007 and €1,085-48, being two weeks' pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)