

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE

CASE NO.  
UD1695/2009, MN1651/2009

against

EMPLOYER  
under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms S. Behan

Members: Mr J. Killian  
Ms S. Kelly

heard this claim at Cork on 2nd September 2010

### **Representation:**

Claimant : Kelly & Dullea, Solicitors, 5 South Mall, Cork

Respondent : Ms. Deirdre Gavin, IBEC, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

### **Respondent's Case**

This company, which has been operating in Ireland for several years under different names, provides security systems and services mainly to financial institutions. Those systems include the installation and maintenance of close circuit television cameras (CCTV) and various alarm devices. While its main office and operating centre is located in the greater Dublin region the events in this case relate to incidents which occurred in its only regional office in the south of the country. A service supervisor based in that location and who was the claimant's line manager outlined the circumstances that led him and another colleague to dismiss the claimant in February 2009.

In recruiting the claimant in October 2006 as a grade 2 engineer the respondent issued him with his terms and conditions of employment. Among its contents was a section on disciplinary procedures that contained a list of possible acts which the company considered to be gross misconduct which could merit summary dismissal. In this case the respondent relied upon and justified its action against the claimant based on one of its considerations falling into that category namely:

*Serious negligence, which causes or might have caused unacceptable loss, damage or injury.*

Apart from relying on the claimant's experience and ability as an engineer the respondent also provided him with several days training on various aspects of his work. The company expected him to undertake his jobs properly and professionally and that included the correct installation of cctv and alarm systems. However, there were no written procedures issued to engineers on how to proceed with their work.

This service supervisor told the Tribunal he was informed by another engineer in February 2009 that while performing a maintenance check on a certain premises he discovered that a job previously done by an employee of the respondent's was not completed properly. That employee was soon identified as the claimant and the work related to the installation of security devices at a post office in the summer of 2008. It emerged that the claimant only used one power source for two separate security devices on those premises. That practice compromised security on that premises and was contrary to normal procedure which was to use distinct and non-linked different power sources for each security device. That action was compounded by the claimant in not reporting or logging that operation to the respondent. In addition in returning to those premises later in the year the claimant still did not bring to the company's attention that aspect of his work.

This witness together with a colleague met the claimant and his representative at a disciplinary hearing into this matter on 20 February 2009. He had earlier invited the claimant to that meeting notifying him of the seriousness of the issue. During the course of that meeting the claimant accepted his role and responsibility for that particular job. The possible adverse implications of his work were highlighted to him. Following a ten minute recess to discuss the situation the witness and his colleague returned to the meeting where the witness then informed the claimant of their decision to dismiss him with immediate effect. The witness considered himself open-minded and fair to his staff and who listens and allows them to explain themselves and their work.

The human resource manager received an appeal letter from the claimant dated 26 February 2009. The claimant felt that the decision to dismiss him was too severe and disproportionate. The witness acknowledged this was the first and only disciplinary action taken against the claimant. Prior to attending and deciding on that appeal this manager spoke to other people including senior managers at the respondent about this case. She had not been involved in the original process which resulted in the sanction against the claimant. Following the appeal hearing in early March 2009 the witness wrote to the claimant a week later informing him that she was upholding the respondent's decision. She cited four reasons of negligence on the part of the claimant which convinced her of the rightness of the original decision of her colleagues. The penultimate paragraph of her letter read:

*I believe that even though there were no actual consequences to your actions, the potential consequences of the situation for both our customers and X (the respondent) business could have been catastrophic.*

In accepting that this conclusion was based on only one event albeit it with a number of incidents of negligence the witness concluded that the respondent's trust in the claimant as an employee had gone.

## **Claimant's Case**

The claimant described the task at hand in the post office as not a big job. While he was aware that the two separate security devices required two separate power sources he nevertheless performed a “temporary fix” in only the one power source for both devices. At the time he was responding to a request from the post office to have the cctv operating by the forthcoming weekend and in the absence of a separate power source he linked up the two devices to the one source. He told the post office of that operation but neglected to inform, log or report that event to the respondent. The claimant accepted that his job was not done properly but rejected the assertion that his improper work would lead to the consequences as outlined by the respondent. An unlikely and extremely rare set of cumulative scenarios would have to occur in sequence in order for a potential catastrophe to occur.

Facing into the disciplinary hearing the witness expected at worst that he would be subjected to a lesser sanction than dismissal. He reasoned that this was his first mistake and that since his oversight had not actually negatively impacted on either the customer or respondent then its seriousness was not so great. The claimant added that the company was wrong to link their lack of trust in him as an employee based on that one event.

### **Determination**

An employer must have established the facts of a case and conducted itself in accordance with fair procedures and natural justice before it summarily dismisses an employee. While the Tribunal has some reservations about the procedures and ultimate sanction adopted in this case it nonetheless finds on balance that the actions and decisions of the respondent in dismissing the claimant did not constitute an unfair dismissal.

The claimant admitted his role and responsibility in this case and at the very least greatly contributed to his dismissal. His contention that he was harshly treated had some merit but this was outweighed by his actions, which did amount to serious negligence on his part. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2005 fails.

Since the Tribunal accepts that this dismissal was by way of gross misconduct the appeal under the Minimum Notice and Terms and Terms of Employment Acts, 1973 to 2005 also falls.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

