

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
MN947/2009
UD920/2009

WT406/2009

- claimant

against
EMPLOYER

- respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms S. McNally

Members: Mr D. Hegarty
Ms. P. Doyle

heard this claim at Cork on 29th April 2010

Representation:

Claimant(s) : Ms. Helen Boyle BL instructed by:
Mr Stephen Foley, Don Ryan & Company, Solicitors, 9 Westbourne Place,
Cobh, Co Cork

Respondent(s) : Barry M. O'Meara & Son, Solicitors, 18 South Mall, Cork.

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant gave evidence. He was originally employed as door security personnel for another security company mainly in a hotel in Rochestown but this had gone out of business. He received his P45 by hand from the Operations Manager for the named respondent. This person had also worked for his previous employer. The respondent took over the business and he remained employed as door security personnel working 2-3 nights a week under the same terms and conditions as before in the same hotel.

In October 2008 he was employed as a Supervisor of staff employed as doormen of a hotel in Rochestown working 2-3 nights a week. A debutants ball was being held on October 23rd 2008 of which he had no prior knowledge. Earlier that day a neighbour of his had informed him that her 15-year-old daughter had been invited by a 17 year old to this ball and would he keep an eye on her. He contacted the Operations Manager and was told to come down to the hotel.

He was given a direct order by one of his Managers (hereafter known as GD) at the hotel not to let the girl's older brother (hereafter known as AF), and employee for the respondent, onto the premises. There was a legal dispute between him and the Operations Manager and he did not want to get embroiled in it. He told GD he did not want to get "into a legal issue" and was told he was fired. He received a call from his Supervisor who said he would try to sort it out. He received a call from GD who again said to him that he had been given a direct order and if he did not follow it he was fired. GD said that he was suspended and the matter would be investigated. He told GD that he would only fire him the following week. It was a shouting match. He left a letter for the Manager of the hotel to inform him what had occurred. He met his Supervisor the following Wednesday and was told he was let go because of the letter he had written to the Manager of the hotel. He gave evidence of loss.

On cross-examination he explained that he had been employed in security with a number of security companies. The Operations Manager, who he had worked with before, had offered him a position with the respondent. His terms, conditions and salary were the same as before. When asked he stated that he had not been sent a contract from the respondent.

When put to him he stated that insubordination was not a fireable offence. In GD's first call he told him he was fired, in the second he was told he was suspended and would investigate then he was told he was fired. When asked he said he did not know how the respondent was aware of the letter he handed in to the Manager of the hotel.

Respondent's Case:

The respondent's Strategic Manager gave evidence. He explained that he was not an employee of the respondent during the period of time in question. He explained that the respondent had tendered for contracts and had not taken over all of the claimant's previous employer's contracts. New uniforms were issued and new contracts, but not all were returned signed. He had no dealings with the claimant.

On cross-examination he said the Operations Manager had tendered the contract in the hotel the claimant was employed. 40-50 employees from the previous security company came to work for the respondent.

The Operations Manager gave evidence. He had worked for the claimant's previous employer as an Area Manager. The company's security licence was suspended and he was given 2 weeks notice. A week later he was offered a position with the respondent. He contacted previous colleagues; including the claimant to offer them work. He tendered for the contract with the hotel the claimant had been employed in.

On October 23rd 2008 he received a text message from AF stating he was leaving the company to work elsewhere for cash in hand. AF was working in Kinsale and he and some other staff were drinking on the premises, the Manager was not happy and the Gardaí were called. He received a call from his brother telling him about the debutants ball and that AF's sister was invited. AF had told his brother that no one would stop him entering the hotel that evening and he would make sure the respondent lost the contract. He spoke to GD and asked him to speak to the claimant and tell him not to let AF and he would inform the hotel management what had happened in Kinsale. He spoke to the claimant after he had been spoken to by GD and was told he was not doing the respondent's "dirty work". The witness told the claimant what had happened in Kinsale. The claimant asked was he sacked and he told him he was just off for the night.

He informed the hotel night Manager. GD contacted him and told him the claimant had been very abusive. The following week he was informed that the claimant had written a letter to the hotel

management about what had occurred and stating he had been sacked. He told GD. A few days later he spoke to GD who informed him the claimant had been let go.

On cross-examination he stated he had supplied the radio equipment to the hotel. He was still working for the hotel but with a different security company.

Determination:

Having carefully considered the adduced evidence the Tribunal finds it is not satisfied that a transfer of undertaking applies to this case. This means in effect that the claimant did not have the required minimum length of service with the respondent to allow him come under the protection of the Unfair Dismissals Acts. Consequently, the Tribunal determines it has no jurisdiction to hear his claim under those Acts.

The appeal under the Organisation of Working Time Act, 1997 is dismissed for want of prosecution.

In allowing the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, the Tribunal awards the appellant €257.73 as compensation for outstanding notice.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)