

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:  
EMPLOYEE *-claimant*

CASE NO's.

UD886/2008

RP763/2008  
MN817/2008  
WT367/2008

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 P. Clancy

Members: Mr. T. Kelly  
Mr. B. O'Carroll

heard this claim at Limerick on 19<sup>th</sup> April 2010 and 22<sup>nd</sup> June 2010  
and 07<sup>th</sup> September 2010

**Representation:**

Claimant: Ger Kennedy, SIPTU, Connolly Hall Churchwell Tipperary Town Tipperary

Respondent: Tom O'Halloran, Thomas J. O'Halloran Solicitor, Upper Ashe Street, Tralee, Co,  
Kerry

The determination of the Tribunal was as follows:

At the outset of the hearing the claim under the Redundancy Payments Acts, 1967 to 2007 was  
withdrawn. Dismissal as a fact was in dispute.

**Claimant's case:**

The claimant commenced employment as a security officer with the respondent company in 2005.  
He was based at the regional hospital and his main duties were ensuring that visitors only visited at  
appropriate times and providing assistance to doctors and nurses as required. His hours of

ork were 8am – 6pm, in line with the availability that he had stated in his job application. The claimant had operated other hours of work, 7am – 5pm, on occasion with prior agreement. His contract of employment stated that, “*starting and finishing times will be agreed with your Supervisor/Director*”.

In early 2008 the claimant was moved to a site in Dominic Street. This move resulted in a reduction in hours from 50-60 per week down to 45 per week. He was told that this was an operational move. The claimant requested an explanation in writing but was not provided with one.

In January 2008 a 3 cycle shift system was introduced. The claimant was not placed on this shift cycle roster system and he viewed this as an acceptance by the respondent of his day time hours.

On 26<sup>th</sup> February 2008 the claimant got a letter from Mr. N saying he was being reassigned to a site in Ennis on an 8pm – 8am shift. When the claimant commenced employment with the respondent they did not hold the contract for the site in Ennis. If the claimant were to take the position in Ennis it would involve circa 46 mile commute and that on top of his shift would only provide for 5/6 hour rest period, not the required 11 hrs.

On 27<sup>th</sup> February 2008, while carrying out his duties on a site in Dominic Street, the claimant was called to a meeting with BN, the managing director of the respondent company. He was informed by another security officer that BN wanted to see him. He asked what it was about and the security officer told him that he wasn't getting involved. BN then came to the claimant directly and asked the claimant to see him in the office. The claimant asked BN what the meeting was about and BN's attitude was you'll find out in the office.

The claimant explained to BN that he would have to call TOB, the office manager on site, before he could leave his post. BN told the claimant there was no need, that he would sort it. BN then returned with another security officer and told the claimant that he had gotten clearance. At this time, the claimant was in the company of two fellow employees. The claimant told BN that he wanted to have a witness/representative at the meeting. BN told the claimant he could pick one of the fellow employees that were in his company.

BN then told the claimant that he was relieving him from his duties. The claimant took this as being suspended. He asked BN “*is the suspension with pay?*” BN responded, “*you've already been paid*”

The office manager then asked the claimant to remove himself from the building because it was his understanding that the claimant had been dismissed from the respondent company. The claimant told the office manager that he was waiting on the Assistant Branch Secretary from his union and asked if he could wait elsewhere in the building. The office manager agreed to this request.

The claimant referred to a letter dated 27<sup>th</sup> February 2008, from BN, which states “*specifically, concerns that the area manager had in relation to your duties*”. The claimant told the Tribunal that he was never made aware of these concerns and prior to 27<sup>th</sup> Feb it was never brought to his attention that he was underperforming in his duties. The claimant received a written warning in this letter but was not given an option to state his case in respect of this warning. The claimant was not given a right of appeal. The claimant feels that the terms of natural justice were not applied in this incident. As BN was the MD in the respondent company there was nobody of higher status for the claimant to appeal the written warning to.

On 28<sup>th</sup> February a follow up meeting took place. At this meeting the union branch secretary made representations on the claimant's behalf for his transfer to another site, specifically to the regional hospital. The branch secretary informed the claimant afterwards that this was a non-runner because BN would not agree.

In March the union sought help from the Labour Relations Commission to try and resolve the issues. The claimant remained suspended without pay. He attended a conciliation conference but the conciliation officer could not broker an agreement and the matter was then forwarded to the Rights Commissioner Service. On 26<sup>th</sup> March 2008 BN wrote to the claimant informing him that he was being released from his employment with the respondent company. The claimant told the Tribunal that he never signalled that he wanted to end his employment with the respondent.

The claimant said that BN did not provide him with any opportunity to resolve the issues between them. The claimant was not in receipt of any pay from February until the date of dismissal.

The hearing was adjourned to 22<sup>nd</sup> June 2010.

At the resumed hearing the claimant stated that he had made efforts to secure alternative employment since finishing with the respondent. He was offered employment with another security company but the offer was retracted when he could not obtain a *letter of service* from the respondent. There was also an offer of other employment within the industry but at a lesser rate than he had been paid unless he could get this letter of service. This letter was eventually received in February 2010 after the intervention of NERA. The claimant is currently employed on a casual basis with another security company.

In relation to the amount of time spent at specific locations within the place of work the claimant said he spent approximately 20% of his day in the office and the other 80% was spent between the security desk in the front hall, which he claimed provided him with a full view of the public floor, and walking around the public area. However he also stated that he probably spent less time than the other security offer walking around the public area but that the other officer spent as much, if not more, time as he did in the office. The claimant was satisfied that this met the requirements of the client.

During the course of cross examination of the claimant he stated that, subsequent to 27<sup>th</sup> February 2008, his union representative requested, on his behalf, a transfer to the Maternity Hospital but that this request had been rejected by BN.

### **Respondent's case**

The first witness for the respondent KD stated that the claimant had been transferred to Dominick Street because he was getting too tied up with other things (union business) and that this was interfering with his day to day job. KD did not know what hourly rate of pay would apply to the complainant in Dominick Street but he was sure that he was not going to be at a financial loss.

The reason for KD and BN visiting Dominick Street on 27<sup>th</sup> Feb was two fold. Firstly they had a VETAC cert to give to the complainant and secondly they had received a complaint from their client at Dominick Street expressing his dissatisfaction at the service being provided there. They intended discussing the matter with the claimant and the other security officer there.

Having already spoken with the other security officer BN went to ask the complainant to come to the office but he refused on the basis that he wanted to have union representation present. BN returned to the office and told this to KB. KB said that BN had not been shouting but that the claimant was pushing at the door and shouting “is that with pay”. KD stated that he was not present when BN allegedly told the claimant that he was suspended. KD jumped up and shouted “lads will you all cop on”. After that both KD and BN left the premises. Later that day the client rang to say that the claimant was still on the premises and in uniform. The client was informed that he was not supposed to be there and the client said that he was going to ask the claimant to leave.

The next day KB met with two union representatives acting on behalf of the claimant. At this meeting KB stated that the claimant was not suspended and that there was a job there for him. The union representatives stated that the offer of employment in Ennis was not suitable. KD understood this and said he would try and find an alternative. However Dominick Street was no longer an option and KD was not happy with the claimant’s performance in Limerick Hospital but he asked would the claimant consider the Maternity Hospital on day shifts. One of the union representatives enquired with the claimant about the Maternity Hospital but informed KB that he was not interested in that position. KD was adamant that the Maternity Hospital was his suggestion and that at no stage had this been rejected by BN.

**Determination**

The Tribunal determines that the claimant was unfairly dismissed. There was a letter opened to the Tribunal and in evidence it was admitted that the claimant was dismissed. A dismissal is presumed to be unfair unless it is proved otherwise. It is clear that procedures were not in place and the employee was not notified that his job was in jeopardy.

The Tribunal determines that compensation be the most appropriate remedy having regard to all the circumstances.

Accordingly, the Tribunal awards the claimant the sum of €9,500.00, under the Unfair Dismissals Acts 1977 to 2007.

The claim under the Redundancy Payments Acts, 1967 to 2007, was withdrawn during the hearing.

Under the Organisation Of Working Time Act, 1997, the Tribunal awards the claimant the sum of €260.27.

Under the Minimum notice and Terms of Employment Acts, 1973 to 2005, the Tribunal award the claimant the sum of €950.00, this being two weeks gross pay in lieu of notice.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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