

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE
-claimant

CASE NO.
UD1096/2009
RP1253/2009
MN1111/09
WT493/2009

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: Mr P. Hurley
Members: Mr. W. O'Carroll
Ms S. Kelly

heard this claim at Limerick on 8th September 2010

Representation:

Claimant: Mr. Ger Kennedy Siptu, Connolly Hall Churchwell,
Tipperary Town. Ms Mary Mc Elligott, Siptu, 4 Church Street,
St John's Square, Limerick

Respondent: Mr. Tim O'Connell, Ibec, Confederation
House, 84/86 Lower Baggot Street, Dublin 2

Background:

The claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn from the outset. The claimant worked for the Respondent company as a security officer. The Respondent provided security for industry.

Preliminary point:

The claimant's representative raised a point regarding a document that was being relied on by the Respondent. The document was a written statement by a person known as DC and DC was not present at the hearing to give evidence. The Respondent replied that they were not going to call the witness and that the person deciding the dismissal took it into consideration. The Tribunal determined to proceed with the case.

Respondent's case:

The Tribunal heard evidence from a witness (JB) who dismissed the claimant. He went through the background of the Respondent company which is a security company operating for the previous forty one years. The claimant worked on a site of a large pharmaceutical customer of the Respondent. They had twelve employees on site for 24 hours a day on 365 days of the year

There was a nerve command centre at the “bottom gate” main gate which housed an alarm centre and cameras. The claimant mainly worked at the main gate. Part of the security duties was topatrol and to check that correct temperatures were maintained.

In 2008 / 2009 the witness received information that he should examine records of the security team for the Christmas period. He e-mailed each officer to ask them to send him their arrival times and departure times for the period from 22nd December to 29th December. The claimant replied by e-mail and noted that he had arrived late and departed early (on 24th and 25th December). The email was opened to the Tribunal and it showed:

“Monday 22/12/09 07:00 to 19:00
Tuesday 23/12/08 07:00 to 19:00
Wednesday 24/12/08 07:10 to 19:00
Thursday 25/12/08 07:20 to 17:50”

The witness explained that the Respondent paid a treble time premium for Christmas day, circa €480.00. Also if a security team is depleted by any member for any reason they have to be replaced. The claimant left at 17:50 and should have left at 19:00.

He contacted the claimant by e-mail to have an investigation meeting to find out the claimant’s reasons for the discrepancy. He told the claimant that he could bring representation. The witness opened the company handbook of procedures to the Tribunal and explained that all employees had the handbooks. He met the claimant who had his representative in attendance and Ro’M also attended.

The witness explained that the “bones of it was he was going off-site on 25th and it was admitted by him in his e-mail”. During the meeting the claimant told him that the team leader on the day (LS) gave him permission so they had to look into the matter further. He told the claimant that it was a very, very serious matter to leave the site. He could not recall what reason the claimant gave for arriving late, the claimant’s explanation for leaving early was that LS gave him permission. It also became known at the meeting that the claimant failed to get into proper uniform at some time. The pharmaceutical site had strict gowning procedures. The witness explained that the officers had their own uniforms and were also supplied with a fresh (gown) uniform on the site also. They also put on different gowns if they go into different areas to avoid contamination.

They adjourned the meeting to clarify matters and suspended the claimant with pay. The witness had to clarify if LS had allowed the claimant to leave early and LS told him that he stood over his report (that he had not allowed the claimant to leave early).

They reconvened the meeting and put their findings to the claimant and his representative. There was a plea for leniency from his union for a lesser penalty. They told them that they were considering dismissal. At the meeting on 27th January they told the claimant that they were dismissing him. This was because of a serious breach of compliance with site protocol, arriving late, leaving early and being out of uniform.

He advised the claimant of his right to appeal and the claimant did not appeal. If the claimant had appealed it would have been the MD who heard the appeal.

Claimant's case:

The Tribunal heard evidence from the claimant. He had sixteen year's experience as a security officer. He worked in the Respondent for circa three years. He had never been in trouble nor was he ever given a warning.

He had arrived late because on the week in question he had influenza. He had not gone on security patrols because they were not on patrols during the day. There were three officers on duty on the main gate on the day in question. There was a duty manager from the pharmaceutical customer on duty.

The security staff would have to go into the Plant if alarms went off. He followed procedures as regards changing of uniform. He was out of uniform until he went to the location to change into the uniform.

Towards the end of his shift (on 25/12/08) he told LS that he was not feeling well. He pointed out to LS that he would be able to return within fifteen minutes if he was needed (that he could go home and return if needed). LS did not object and he went home.

He received an e-mail and responded to it. He was then advised that there would be a meeting and to have a union representative. He was not advised it would be a disciplinary matter. He told them at the meeting why he had left but he did not think he was believed by them as they had a statement from LS.

He was not given a chance to challenge the statement. He was not given the right of appeal. He had never been in trouble before in the Respondent company.

Determination:

The claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn from the outset. Accordingly, the Tribunal dismisses the claim under the Redundancy Payments Acts, 1967 to 2007.

The Tribunal unanimously determine that the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds. The company procedures were defective. The claimant was not able to fully answer allegations. The Tribunal determines that compensation be the most appropriate remedy and awards €25,000.00 under the Unfair Dismissals Acts 1977 to 2007.

No evidence was adduced under the Organisation of Working Time Act, 1997 and that claim is dismissed.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 succeeds and the Tribunal award the claimant the sum of €5,440.00, this being eight weeks gross pay as compensation in lieu of notice.

Sealed with the Seal of the
Employment Appeals Tribunal
This _____

(Sgd.) _____
(CHAIRMAN)