

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE-*Appellant*

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr C. Lucey
Mr M. O'Reilly

heard this claim at Dublin on 21st November 2011

Representation:

Claimant : Mr. Conor B Cahill, Sheehan & Company, Solicitors, 1 Clare Street, Dublin 2

Respondent : Mr Michael McGrath, IBEC, Confederation House, Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

Claimant's Case

When the Nigerian born claimant commenced employment as a security officer with the respondent in the spring of 2002 he did not have Irish citizenship. In order to allow him to work in this jurisdiction he needed a Garda National Immigration Bureau (GNIB), which issued to him periodically. Among the details on that card was an expiry date. In April 2007 his fulltime status with the respondent was changed at his request to that of a part time permanent employee. In October 2008 the claimant received a written warning for sleeping while on duty. At that time and up to March 2009 he was based at one location where he only did night shifts.

The claimant was again sanctioned with a final written warning following a disciplinary meeting on

30 March 2009. He denied the allegation that he was again sleeping while on security duty. That sanction was confirmed to him in writing by the respondent's operations manager. Following that meeting and as part of an agreement with the respondent the claimant reduced his hours of work again as he only made himself available on Saturdays.

The claimant was again sanctioned with a final written warning following a disciplinary meeting on 30 March 2009. He denied the allegation that he was again sleeping while on security duty. That sanction was confirmed to him in writing by the respondent's operations manager. Following that meeting and as part of an agreement with the respondent the claimant reduced his hours of work again as he only made himself available for day shifts on Saturdays. Since he had already worked on such shifts the claimant felt there was no requirement to undergo further training.

When the claimant reported for work at his normal location on Saturday 25 April 2009 he was refused permission to enter the premises by a controller. Since his subsequent attempt to contact his staff manager did not result in a satisfactory response the claimant wrote to the operations' manager on 12 May about his work situation. He added that he never received an offer of work from the respondent on 8 May. The claimant received a phone call from that manager and both parties discussed his training needs. At that time no mention was made of his GNIB card. During that time the claimant possessed a valid GNIB with an expiry date of February 2013. He had submitted a copy of that card to the respondent using the services of a patrol driver. He had submitted a copy of that card to the respondent using the services of a patrol driver.

Acting on his instructions the claimant's solicitors wrote to the respondent on 19 June. In turn he received a phone call from the operations' manager whereby he advised her to contact his solicitors who were dealing with his case. The claimant had not been working for the respondent since March that year. In a letter dated 29 June to those solicitors the respondent raised the issue that the claimant's GNIB card was currently out of date and that notwithstanding other issues the company could not lawfully employ him until that issue was properly addressed. In dealing with that issue the claimant's solicitors replied to the respondent on 13 August stating among other things that the claimant had a valid card that had already been furnished to the company and enclosed another copy of that card. That letter also called upon the respondent to reinstate the claimant back to his position from March 2009.

The claimant's continuing frustration with the respondent continued and eventually resulted in him tendering his resignation to the company in November. By that stage he had concluded that the respondent did not want him to return, as he had not worked for them for several months.

Respondent's Case

The claimant's staff officer and supervisor told the Tribunal that if there were any doubts about a security officer's attendance for duty then that officer would not be rostered. This witness was told that the claimant's availability and location for security duties had changed from 1 April 2009. Since the claimant was now barred from the site where he was allegedly sleeping he had to undergo some training for a new site before being rostered to work there. While the onus was now on the claimant to inform him of his availability for training this witness did not tell the claimant of that responsibility. The company's logbook had no record of the reported incident with the claimant on 25 April nor had the witness any memory of being contacted by him two days later.

By May 2009 the issue of the claimant's GNIB card had emerged and in the absence of a resolution to that situation the witness felt unable to facilitate training or rostering for him.

The operations' manager who attended the disciplinary meeting on 30 March 2009 said it was made crystal clear to the claimant that he henceforth only to work days on sites other than the one he had been found sleeping. That was a particularly sensitive site and the client did not want him back on security duty there. However that detail of that meeting was not contained in the notes of the meeting nor in a letter she wrote to the claimant the next day. The claimant did not appeal the sanction of a final written warning against him.

During the first half of May 2009 the respondent's computer system stated that the claimant's GNIB card had now expired. In that context the witness phoned him and that issue was then discussed. She was unaware of the claimant's letter to her dated the previous day and during the phone call he never mentioned it. When she received that letter she passed it on to the company's human resource section. A further letter dated 19 June from the claimant's solicitors to the respondent was also sent to that section. The witness phoned the claimant on 23 June in an attempt to resolve the issue but he was unwilling to discuss it. It was her intention that she meet with the claimant and address all outstanding issues with him with a view to allowing him recommence work.

The witness was unaware that the head of human resources wrote to the claimant's solicitors on 29 June. That letter raised the issue of the claimant's GNIB card and sought a copy of his current card. The company was still willing to meet the claimant to discuss the ongoing situation. The witness thought that a copy of that card was sent to the respondent with a letter from the claimant solicitors dated 13 August. She commented that there was no chance of the claimant being reinstated back to his former role at his old site on the same hours he had prior to the disciplinary meeting as requested in that letter.

The witness did not know why the claimant had not been rostered or asked to train subsequent to 13 August and she was unable to comment on the sequences and timing of his GNIB card. The respondent's T2 form signed on 4 October 2010 stated among other things that up to 30 November 2009 the claimant had not provided the company with his "new" GNIB card.

Determination

At its mildest this was a case of misunderstanding, poor communication, and unwillingness on all concerned to actually physically meet to address all the issues concerned. Those issues included training, rostering, and above all the issue of the claimant's GNIB card. Instead the parties opted to take an approach partially based on incomplete information, unsafe assumptions, and a degree of intransigence. That approach has led to this case coming before the Tribunal.

Having reflected and considered the evidence the Tribunal has concluded that each party played its part in the cessation of the claimant's employment. In allowing the claim under the Unfair Dismissals Acts, 1977 to 2007 the Tribunal orders that the claimant be re-engaged back into the position he held with the respondent from 1 April 2009. That re-engagement is to commence on 1 January 2012.

The appeals under the Redundancy Payments Acts, 1967 to 2005 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 were withdrawn during this hearing.

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Employment Appeals Tribunal

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