

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD270/2010
MN251/2010

Against

EMPLOYER

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. N. O'Carroll-Kelly BL
Members: Mr. P. Pierce
Ms M. Maher

heard this claim at Dublin on 22nd June 2011 and 30th September 2011

Representation:

Claimant:

Patrick Troy & Co, Solicitors, 7 Lombard Street East, Dublin 2

Respondent:

Mr. Joseph Bolger, Esa Consultants, The Novum Building,
Clonshaugh Industrial Estate, Dublin 17

Respondent's case

The respondent recruited the claimant as a Control Room Manager on 08th August 2007. Initially there were no difficulties with the claimant's performance however issues began to arise later and a verbal warning was issued to him on 29th August 2008.

In October 2008, following a robbery at a client's premises, it was discovered that the claimant had not followed up on obtaining Unique Registration Numbers (U.R.N.) for a number of customers. The U.R.N. is issued by the Gardai and without this they will not respond to an alarm at the client's premises. This job was within the remit of the claimant and therefore he was called to a meeting on 3rd November 2008. The claimant was informed of his poor performance and told that if there was any repeat of his failure to carry out his duties that he would be dismissed.

There was a performance review in April 2009 and the claimant attended a meeting, in respect of the outcome of this review, on 24th April 2009. As a consequence of this meeting the respondent wrote to the claimant outlining the duties that required improvement. However, another incident arose whereby a U.R.N. had not been obtained and consequently the Gardai would not respond to the alarm. This led to a further disciplinary meeting and a letter being issued to the claimant on 15th May 2009. This letter informed the claimant that he was being demoted to non-supervisory duties as an alternative to being dismissed. The claimant requested more time to improve himself and this request was being considered by the respondent. However on the 2nd July 2009 the respondent received complaints in relation to the claimant's failure to update a key holders list. The claimant was informed that he was now being demoted in accordance with the letter of 15th May 2009.

The claimant refused to accept demotion on the grounds that he would have to return to shift work and therefore the respondent dismissed him for poor performance on 7th July 2009.

Claimant's case

The claimant stated that he had been employed as a senior supervisor and assistant to the Control Room Manager. He agreed that obtaining the U.R.N.s from the Gardai was part of his job. Initially there was no formal procedure for following up on applications after they had been sent. However a procedure was put in place in May 2009. The claimant himself devised a spread sheet which recorded the follow up actions in relation to U.R.N.s but stated that the time it took Gardai to issue the U.R.N.s was outside of his control.

Having been told, on the 15th May 2009, that he was being demoted as an alternative to being dismissed, the claimant asked for time to allow him to prove himself as a supervisor. As he was not demoted the claimant took it that his request had been granted. However he was then dismissed on 7th July 2009 and was not offered the alternative of demotion. The claimant did not want to be dismissed and would have accepted demotion instead. He had also previously agreed to go on shift work.

The letter of dismissal made no reference to the claimant's right to appeal his dismissal but he felt that by going to his solicitor that this was in fact an appeal. The claimant was not a member of any Trade Union.

Determination

It was not clear whether the letter of 15th May 2009, offering demotion as an alternative to dismissal, was left stand. The claimant was given an opportunity to prove himself as a supervisor and there should have been a follow up meeting before dismissal was considered.

Evidence was given that a U.R.N. had to be furnished by the Gardai before they would attend an alarm call out. The claimant gave evidence that he had a contact in the Gardai and used that contact to try and secure U.R.N.s However the Tribunal accepts that the claimant had no control over the time it took the Gardai to issue U.R.N.s.

Having carefully considered all the evidence adduced the Tribunal finds that the claimant was

unfairly dismissed and in all the circumstances, awards the claimant €3,660.00 under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal also finds that the claimant is entitled to two weeks notice and awards him €1,462.00 under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

