

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE – *claimant*

UD1084/2010
RP1505/2010
MN1051/2010

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. K.T O'Mahony BL

Members: Mr. D. Hegarty
Mr. D. McEvoy

heard this claim in Cork on 21st September 2011

Representation:

Claimant: Mr. Darren O'Keeffe, James Riordan & Partners, Solicitors,
50 South Mall, Cork

Respondent: Ms. Mairead Crosby, IBEC, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Summary of Evidence

The respondent provides *inter alia* a security service to clients. The claimant commenced employment as a security guard with the former owner of the business on 2 February 1999 working on Site N. When the respondent took over the company the claimant worked on

the site doing security, first aid and a first responder to accidents on site. There were 12 employees on the client's site and as he was one of the longest serving he had a team leader's allowance. It was his job to ensure his colleagues were doing the job as required.

The HR manager who deals with security staff received a complaint from the management of Site N making allegations of theft against the claimant. The HR manager, being based in Dublin, asked the local HR manager (HRL) to deal with allegations. The client instructed the respondent to remove the claimant from its site. By letter dated 16 February 2010 HRL informed the claimant that it was alleged that he had removed items from Site N, invited him to an investigation meeting the following day and suspended him on pay pending the investigation. At the meeting on 17 February the claimant was accompanied by his trade union official. They viewed the CCTV footage covering the alleged theft and the claimant was given the opportunity to explain his behaviour. The claimant was accused of taking a piece of timber (two feet by two feet) and a length of rope from the site. The claimant's position was that he had brought these items onto the site because one of the employees had promised to make him a swing for his children. As regards the CCTV footage video showing him holding something by his car the claimant explained that his dog had been sick in the car he had some materials to cleaning the interior of his car.

The client refused to allow HRL to interview its staff as part of the investigation. On occasions the respondent is asked to remove some member of staff from a client's premises without any reason being given for the removal. On the conclusion of the investigation the claimant was cleared of any wrongdoing.

An attempt by the respondent to switch the claimant and another security guard between sites did not ultimately succeed as some weeks later the number of employees there was reduced by one, the claimant. The claimant turned down the respondent's offer of work on another site because it would involve excessive travel for him resulting in long hours, having to leave home in the very early hour of the morning and being caught up in heavy traffic. Around this time the claimant was absent on sick leave for a number of weeks.

HRL met the claimant and his trade union official on 20 April 2010 where they discussed the respondent's difficulty in finding a position for him and the possibility of making him redundant. At the meeting the claimant indicated that he would be returning to work on Monday 26 April. At a further meeting on 23 April the parties agreed that the claimant would be made redundant. The claimant was not particularly happy about the redundancy and felt his reputation had been sullied. The respondent wanted the claimant to work out his six weeks' notice but suitable employment was not found for him. The respondent's investigation had cleared the claimant of any wrongdoing.

Determination

The client instructed the respondent to remove the claimant from its site. The client did not allow the respondent to interview members of its staff as part of the respondent's investigation into the allegations against the claimant. In any event, the claimant was cleared of any wrongdoing. However, the respondent could not put the claimant back on the client's site. Efforts by the respondent to find alternative employment for the claimant proved ultimately to be unsuccessful. The respondent had no work that it could offer the claimant. In the circumstances the claimant's dismissal was not unfair. Accordingly, the claims under the Unfair Dismissals Acts 1977 to 2007, fails.

The appeal under the Redundancy Payments Acts 1967 to 2007 is dismissed as the claimant received his entitlement under those Acts.

The claimant received prior notice of his dismissal and the uncontested evidence was that he as paid during his notice period. Accordingly, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 is dismissed .

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)