

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE – *claimant*

UD1913/2010

against

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C. Corcoran B.L.

Members: Mr. M. Flood
Mr. M O'Reilly

heard this claim in Dublin on 15th February 2012

Representation:

Claimant: Ms Bernadette Thornton, SIPTU, Membership Information &
Support Centre, Liberty Hall, Dublin 1

Respondent: Mr John Barry, Management Support services (Ireland) Limited, The
Courtyard, hill Street, Dublin 1

The determination of the Tribunal was as follows:-

Respondent's Case:

JR a mobile patrol driver for the company gave evidence that his job was to respond to alarm activations and check manned sites on a random basis to check that operatives and sites were safe. He visited the claimant's site which was an empty housing estate on the morning of 17th June at 4.20 am. A mobile patrol (walk about) occurred on a random basis but usually every hour to ever hour and a half. JR checked the duty report and signed off that a patrol had taken place at 2.40am. He left the site and received a telephone call which meant he had to pull over and at this time he witnessed the claimant leaving the house, checking outside and going back inside. It was dark but there was street lighting. He was sure he seen the claimant come out of the house have a look around and then go back inside. No patrol was done.

JR went back to the house at 4.38am, the claimant seemed surprised to see him and he told the claimant that he would have to file a report the incident he had just witnessed. He did up his report and left it with the operations manager in the office at the end of his shift. JR was called to a meeting with management. Everybody was given a chance to give their side of the story and the course of events. The claimant did not bring representation even though he could have done. He continued to deny not carrying out his patrol. The outcome of the meeting was that the claimant was dismissed.

The operations manager SH in his sworn evidence stated that he was familiar with the claimant. He was involved in the appeal made by the claimant. In a previous incident the claimant had fallen asleep while on duty. It was considered a serious incident and could have led to dismissal as per his contract. The claimant denied it at first. Eventually he admitted falling asleep and apologised. He received a final written warning and signed a plan for improvement. Honesty is important in the security industry and when the claimant denied not doing the patrol SH upheld the decision to dismiss. The initial decision was taken by VC.

Claimant's case:

The claimant SA stated that JR called and signed the duty report at 4.15am and was there for about 5 minutes. JR left but then returned to the house some 20mins later. He accused SA of not doing a proper patrol, SA had no idea why he was being accused, he had done his patrol as normal.

Asked how long a patrol would take SA said "18 to 20minutes". Asked when he left to do the patrol he said "about 10 minutes after JR left".

SA admitted he was on the premises when JR called at 4.38am.

SA was aware he could have somebody present at his meetings and when asked to be honest as to whether he had carried out his patrol he said he had, and he did know why JR had said he had not.

Determination:

The Tribunal carefully considered all of the evidence adduced by the parties. The Tribunal is satisfied that the claimant was dismissed by the respondent in circumstances where there was justifiable grounds for such dismissal.

Accordingly the Tribunal finds that the claim under the Unfair Dismissals Acts 1977 to 2007 fails and is hereby dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

