CLAIMS OF: CASE NO.
EMPLOYEE   *-claimant*   RP1442/2010
                                                   UD1042/2010
                                                   MN1012/2010

Against

EMPLOYER *–respondent*

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: Mr. D. Mac Carthy S. C.

Members: Mr M. Carr
               Ms. E. Brezina

heard this claim at Dublin on 16th December 2011

Representation:
_____

Claimant: Mr. Sean Holt B.L. instructed by
               Mr. James M Sweeney, Solicitor, 14 New Cabra Road, Phibsborough, Dublin 7

Respondent: Mr. Tim O'Connell, I B E C, Confederation House, 84/86 Lower Baggot Street,
               Dublin 2

Background

The respondent is a security company, that provided the claimant as a security officer to a large
site. The claimant was dismissed for being asleep on the job. There are a number of facts agreed
between the parties. The claimant accepts that on the 14th of October he left the central security
centre and said he was going on patrol, he accepts that he was sitting on the couch relaxing and
reading a magazine, he accepts it was his body-warmer that was rolled up on the couch in
a reception area and the claimant accepts that he asked his co-worker to 'mollify' his
supervisor. The claimant denies being asleep. The only conflict between the parties is whether
the claimant was asleep.

Respondent's Case

The claimant's co-worker (AC) and supervisor (WT) gave evidence. AC was due to make a check-in call with head office at 1.05am and in order to do that he had to contact the claimant. AC was in the gate house and attempted to contact the claimant by walkie-talkie. When he failed to contact the claimant AC went to find him. AC discovered the claimant asleep, under his jacket; he was snoring so obviously asleep. The claimant had left AC at 12.40am so was asleep by 1.05am. AC did not wake the claimant; he returned to the security centre, it was not a conscience decision not to wake the claimant AC was shocked and returned to his post. AC then contacted his supervisor and reported that the claimant was missing since 12.40am and had been discovered asleep.

The supervisor (WT) arrived on site at 2.30am and asked AC if the claimant had returned to the security centre. AC confirmed that the claimant had not and that he had been last seen asleep in the reception area. WT left to try and locate the claimant. WT discovered an indent on the couch where the claimant had been last seen sleeping and a rolled up body-warmer. WT returned and informed AC that the claimant was not on the couch but there was an 'indent' on the couch and it was warm. The claimant returned saying he had been on patrol and the three of them discussed the claimant's whereabouts. WT left to move his car. In that time the claimant asked AC to corroborate his whereabouts; AC refused stating he was not putting his own job at risk. WT does not recall asking if the claimant was asleep. WT got reports from AC, the claimant and compiled his own report and referred them to his supervisor, the Contracts Operations Manager (TS).

The Contracts Operations Manager (TS) gave evidence. On receipt of the reports from WT the witness forwarded them to the HR department. The investigation and disciplinary process then commenced. TS met with the claimant and his representative and was told that the claimant had been on patrol, they went through the time-line and TS asked why the claimant hadn't told AC any of this at the time. The claimant denied being asleep on the job. TS gave detailed evidence of the time-line as suggested by the claimant, comparing it to what could have taken place in the respondents view. There is a barcode system located at different points around the site for security to check in – the claimant did not use this system to check in during his disputed patrol.

TS arrived at the decision that the claimant had been asleep based on the witness reports, the investigation results and the time-line conflict with the claimant's explanation. TS decided to dismiss the claimant. There are occasions where security officers 'nod-off' and they will receive a warning for this; the claimant was 'nesting' i.e. intentionally making a bed to sleep, which amounts to Gross Misconduct in the eyes of the respondent. The incident occurred on the 14th of October and the disciplinary meeting was held on the 15th of October.

Claimant's Case

After consideration during the course of the hearing the claimant now accepts that he might of 'dozed off' but did not 'nest.' The claimant gave evidence of the time-line from 12.40am when he went on patrol to 1.30am when he went back to the reception area. The claimant did not hear AC enter the reception area. As he had no contact from AC the claimant assumed everything was ok so proceeded to read some magazines. At 2.25am the claimant returned to the security centre. The claimant was too busy to have been asleep for 1.5hrs. The claimant did not bring the equipment with him to use the barcode system to check-in as this was not an official patrol.

Determination

The claimant was a security officer who was dismissed because his employers were satisfied he fell asleep on duty. The claimant denied he fell asleep. The claimant persisted in this denial until a certain stage of the hearing when he admitted he might possibly have fallen asleep but he did not intend to do so and he was not "nesting" as one of the managers alleged. The claimant gave evidence of his actions at the time he was alleged to be asleep.

The Tribunal do not accept the claimant's evidence and find that the respondent has shown 'substantial grounds justifying dismissal' under section 6 of the Act.

The Tribunal find that the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

The claims under the Redundancy Payments Acts 1967 to 2007 and the Minimum Notice and Terms of Employment Acts 1973 to 2005 are dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This   _____

(Sgd.) _____
    (CHAIRMAN)