

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE -*Claimant*

CASE NO.
UD768/2010

RP1043/2010
MN720/2010
WT328/2010

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
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr N. Russell

Members: Mr J. Browne
 Mr A. Butler

heard this claim at Wexford on 13th February 2012

Representation:

Claimant: Michael O'Neill, McDonald Solicitors, 12 Skeffington Street, Wexford

Respondent: Mr. John Barry, Management Support Services Limited,
The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:

The Operations Manager gave evidence that the claimant was employed as a Security Officer and that his role included duties such as CCTV monitoring, patrolling the site and locking and opening certain gates and buildings. A patrol can be carried out either by foot or with a mobile unit. The standard operating procedure for the site was available to staff both in the company's office and on the site in question.

A company document was opened to the Tribunal which detailed that the company considered the first and last patrol of the shift as one of the most important functions carried out by a security officer. A patrol should also be carried out every two hours where possible. There is a route for the patrol but this should be varied. There are clock in points for the security officer along the route.

The company revises the patrol reports and a copy is provided to the client.

A log report dated 28th December 2009 was opened to the Tribunal. The claimant had completed this report for a split shift that he was working from 19.00 to 1.00am. The claimant wrote that he had screened traffic passenger onto the ferry, locked the lagoon gate and carried out an inspection and ensured that the terminal building was secure. The claimant also wrote that he had later completed a further patrol before going off duty at 1am. He noted on the report that some of the clock in points were not working due to the wet weather.

On that night two vehicles were stolen from the site and an attempt was made to steal a further two vehicles. This occurred between 21.00 and 21.45. The claimant was not in any way being blamed for the fact that there had been a theft on site as his log indicated that he was carrying out a mobile inspection at the time and therefore could not also have been monitoring the CCTV. Given that there had been a robbery on site the company did have to investigate the events of the night and the Operations Manager reviewed the CCTV as part of this investigation and he also requested a report from the claimant. The claimant emailed a report on 30th December 2009 stating that at 23.15 he had went to check the lagoon gate and all was in order. However, there was a discrepancy between what the claimant reported and what was shown on the CCTV.

The claimant was invited to attend a disciplinary meeting on the 19th January 2010. Minutes of this meeting were opened to the Tribunal. The grounds for the disciplinary meeting were that the claimant had failed to carry out his duties and secure the site. The claimant brought a representative to the meeting. The claimant was asked to give an account of what duties he had carried out. At the meeting it was put to the claimant that the vehicle was parked outside the security hut from 21.48 to 00.56 yet the claimant maintained that he had carried out his duties and had patrolled the lagoon area. The claimant raised the issue that certain clock in points along the patrol route were not working due to the wet weather. He said that he had forgotten the tool which allowed him to clock in at internal points. The clock report did not show any clocking's for the claimant.

The claimant maintained that he had carried out a further patrol, as he was required to do. However, a CCTV report showed that the claimant's vehicle remained stationary outside the security hut between the hours of 21.45 and 00.55 despite the fact that the claimant was required to carry out a further patrol during this time. This information was put to the claimant during the disciplinary meeting.

The claimant's representative raised the issue that the number of officers on site had reduced between the 19th December 2009 and 25th January 2010 and that as a result there was no staff to cover the lagoon area. However, the Operations Manager stated that the reduction in staff did not affect the claimant's duties as he performed the same duties he always had. The claimant also made the case that the side gate through which the vehicles had been stolen, was never locked. The Operations Manager disputed this stating that the side gate was part of the client's premises and was usually locked.

A conclusion was reached that the claimant had failed to carry out his duties, as the events which occurred and the claimant's explanation of those events did not match. A decision was reached to dismiss the claimant from his employment and the claimant was informed of this by letter dated 28th January 2010 which stated that the company found that the claimant had not performed his duties and as a result he was dismissed for gross misconduct. The claimant stated that he visited the lagoon area at 20.40 and again at 23.15, however the CCTV footage showed that his vehicle was parked outside the security hut from 20.17 to 20.51 and 21.45 and 00.50. As the claimant did not secure the area appropriately the company considered that his actions significantly contributed to

the theft of four vehicles from the premises. The claimant had breached his terms and conditions and his actions lead to a loss of trust and confidence in him as an employee. The claimant exercised his right to appeal the decision.

During cross-examination the Operations Manager confirmed that the company had received other reports of the clock in points not working in wet weather.

Giving evidence the HR business partner stated that her role was to support the Operations Manager in conducting the disciplinary meeting and to ensure the correct process was followed. The claimant was represented by a shop steward. The HR business partner outlined her recollection of the disciplinary meeting to the Tribunal.

The client had queried why the matter was not reported until 4am when the cars had been stolen at 21.30. If the claimant had carried out the patrol at 23.00 as he should have, he would have become aware of the stolen cars. In light of these facts and the statements made by the claimant, the HR business partner felt that there was a loss of confidence and trust in the claimant.

Giving evidence the Services Director confirmed that he heard the appeal on the 16th February 2010. The claimant submitted an appeal letter dated 1st February in which he stated, " I understand that I previously stated that I did a patrol at approximately 23.00hrs unfortunately I confused my duties with the last night shift that I worked and ordinarily I would have done a patrol between 22.30hrs and 23.30hrs."

The Services Officer considered the fact that the claimant said the clock in points did not work, the fact that none of the patrol points had been clocked and the length of time that the claimant was in the hut without carrying out a patrol. He also noted that the claimant had changed from his original position to stating in the appeal letter that he was confused.

There had been additional resources on site up until December 2009. The claimant did not make any complaint about additional duties. The central issue for consideration was had he carried out his normal duties on the site. The claimant said that ordinarily he would carry out a patrol around 23.00 but he did not offer an explanation as to why he had not carried out a patrol on this occasion.

The Services Officer made the decision to uphold the decision to dismiss the claimant having considered all of the factors and being satisfied that the process and sanction were correct.

Giving evidence the claimant stated that he had performed a security role for nine years. He was shocked when he was informed that vehicles had been stolen. He felt he had fulfilled his obligations on the 28th December 2009. It was his case that the side gate was never usually locked as it was used for access by members of the public.

When he had started work at 19.00 he reported to the A22 gate and screened cars going onto the ferry. After this he retrieved the vehicle and went to the lagoon area where he locked the main gate and patrolled the area. When he returned to the main building he screened foot passengers and carried out a patrol of the main building. He did a walkabout for approximately 45 minutes and then returned to the security hut where he monitored the cameras for a period of time.

The claimant stated that he carried out the same duties as he did on any other day. However, when he was asked to give an account of his duties on the night he had become confused between two shifts. He normally worked from 19.00 to 7.00 but on this occasion he was working a split shift from 19.00 to 1.00am. It was the claimant's case that on a split shift it was the norm for the last patrol to be carried out around 21.30. At the disciplinary meeting one question after another was put to the claimant and he was unable to cope with this as he was also dealing with a personal matter at that time.

The claimant gave evidence pertaining to loss and his efforts to mitigate that loss.

During cross-examination it was put to the claimant that he had reported to the company that he had carried out a further patrol. The claimant stated that he was standing over that report as he had monitored the site via CCTV. He confirmed that he performed only one mobile patrol but that he had monitored the site the rest of the night via the CCTV. He refuted that he had given a false report to the company.

The claimant accepted that had he carried out a later patrol he could have notified the Harbour Inspector that the lagoon gate was open.

Determination:

The Tribunal is satisfied that there were shortcomings in the manner in which the claimant performed his duties on the 28th of December 2009. The Tribunal is further satisfied that the claimant falsified his log report on the evening in question and continued during the disciplinary process to assert that he had undertaken a patrol at 23.15 on the 28th when it was clear from CCTV records that he had not done so. It was only in his written appeal of the decision to dismiss him that the claimant accepted that there had been no such patrol.

Mutual trust is essential to any employer/employee relationship. The respondent company's trust and confidence in the claimant was irreparably undermined by his actions on the 28th of December to the extent that it was reasonable for the respondent company to dismiss.

In the circumstances the Tribunal finds that the claim under the Unfair Dismissals Acts, 1977 to 2007, does not succeed. The Tribunal also dismisses the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The claim under the Redundancy Payments Acts, 1967 to 2007, was withdrawn at the outset of the hearing. As no evidence was adduced by the claimant in relation to his claim under the Organisation of Working Time Act, 1997 this claim is dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)