

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**

**CASE NO.**

EMPLOYEE

UD1937/10

- claimant

**Against**

EMPLOYER

- respondent

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Hennessy  
Ms S. Kelly

heard this claim at Waterford on 11th July 2012 and 11th September 2012.

#### **Representation:**

Claimant: Mr. James Burke BL instructed by David Burke & Company, Solicitors, 24  
Mary Street, Dungarvan, Co Waterford  
On 11<sup>th</sup> July 2012 and 11<sup>th</sup> September 2012

Respondent: Mr. Conor O'Connell, Construction Industry Federation,  
Construction House, 4 Eastgate Avenue, Little Island, Cork.  
On 11<sup>th</sup> July 2012.  
No appearance by or on behalf of the respondent on 11<sup>th</sup> September 2012.

#### **Respondent's case:**

The respondent is a property management company and employed the claimant as a security officer from 20<sup>th</sup> December 2004 to 18<sup>th</sup> March 2010. The claimant was based in a shopping centre for which the respondent was responsible and he was summarily dismissed for gross misconduct when it was discovered that he had given the keys and alarm code to the manager of a commercial tenant of the shopping centre.

KO, the manager in question, was called as the first witness for the respondent. He stated that the claimant had been late opening the shopping centre and that he (KO) phoned him but got no answer. KO then called to the claimant's apartment, above the shopping centre, and the claimant handed him the keys and told him the alarm code so he could open the centre. Later on that day the claimant called into the shop where KO worked and told him to hold onto the keys

and open the centre in the mornings. It was put to this witness that the claimant would deny ever giving the keys and alarm code to him.

In cross-examination the witness was asked had he obtained the keys from anyone else and he replied, no. He was also asked to show the claimant's phone number on his phone but KO stated that he had changed his phone and no longer had the claimant's number. KO was also asked to tell the Tribunal the door number of the claimant's apartment. He did not know the door number but said that a friend of his lived a few doors down and that was how KO knew where the claimant lived. He also stated that his friend had "buzzed him in" and that was how he got access to the stairwell. When it was put to him that the buzzer on the main door to the apartment block was not working KO said he could not recollect if that was so and that he may have phoned his friend.

It was also put to KO that he had signed a statement to the effect that he had obtained the code and keys from another member of his own staff. A copy of this statement was shown to the Tribunal. However, KO stated that the evidence given to the Tribunal was correct and that the statement was incorrect.

### **Claimant's Case:**

The claimant commenced employment as a general operative in late December 2004. During his tenure he only received one warning concerning his timekeeping.

In or around the middle of January 2010 the claimant received a telephone call very early in the morning from his manager enquiring why he was not at work. His manager was most annoyed with him. The claimant was not due at work till 6 pm that evening. His manager asked him to come to work and open up. The claimant arrived at the premises at approximately 7.15 a.m., opened up and returned home.

The claimant arrived at work at approximately 5.45 that evening. Upon his arrival he was shown CCTV footage. He was accused of being on the premises at 6.45 that morning. He was not. The claimant identified the person in the CCTV footage as being one of the butchers.

An investigation followed. The claimant at no time ever gave the butcher a key to the premises. Two weeks later the claimant was presented with pre-prepared statements in relation to the incident and was asked to sign them. He refused to sign the statements.

The claimant continued working. He was invited to a further meeting and was told it was a serious matter. He was told if he admitted giving the butcher a key he would only receive a warning. The claimant again denied giving the butcher a key. The claimant contended that all staff working in the premises had keys and the code to the premises. The claimant was subsequently dismissed. His employment was terminated on 18<sup>th</sup> March 2010.

The claimant has been replaced in his role. He has been unable to secure alternative work since the termination of his employment. He returned to college in September 2011.

### **Determination:**

Having considered the evidence adduced by the respondent on the first day of hearing and the respondent failing to appear at the resumed hearing the Tribunal finds that the respondent did

not discharge the burden of proving to the Tribunal that the reason the claimant was dismissed was fair.

The Tribunal further finds having considered the uncontested evidence of the claimant that he was unfairly dismissed and that fair procedures were not applied. Accordingly, the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and the Tribunal awards the claimant an amount of €32,000.00.

The Tribunal notes that the respondent failed to notify the Tribunal and the claimant that they would not be appearing but simply did not appear. The Tribunal acknowledges that the Construction Industry Federation contacted the Tribunal on 10<sup>th</sup> September 2012 when they were first made aware that they could no longer represent the respondent.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)