

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD651/2011

Against

EMPLOYER

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. F. Crawford B.L.

Members: Mr. P. Pierce  
Mr. S. O'Donnell

heard this claim at Dublin on 29th August 2012

Representation:

Claimant:

Mr. Brendan Archbold, 12 Alden Drive, Sutton, Dublin 13

Respondent:

John C Walsh & Co, Solicitors, 24 Ely Place, Dublin 2

### **Respondent's case**

The respondent is a security firm and the claimant was a security officer on a large site, which encompassed both residential and commercial properties. The claimant commenced employment on 10<sup>th</sup> December 2007 and was dismissed for gross misconduct on 28<sup>th</sup> December 2010.

The claimant was issued with a contract of employment and a copy of the employee handbook, which included a grievance and disciplinary procedure. Part of the claimant's job was to patrol the site on a regular basis and this was recorded in two ways. Firstly, the claimant maintained a manual log and secondly he carried a device with him, which automatically registered his presence at certain locations around the site.

There was an incident of vandalism on 22<sup>nd</sup> September 2010, while the claimant was on duty. This vandalism went unnoticed by the claimant despite this being captured on CCTV and obvious signs of it on the claimant's patrol route. There was also a disparity between the log kept by the claimant and the automated record. The witness for the respondent believed that the claimant had not carried out his duties in accordance with procedures. Consequently the claimant was called to a meeting on the 28<sup>th</sup> September 2010 in order to discuss the matter. The claimant was given very little notice of this meeting and was not told beforehand what the meeting was about. This meeting was conducted by the respondent's Operational Manager (DB) and began as an investigation/discussion but progressed to a disciplinary meeting when the claimant freely admitted that he had not carried out his duties properly on the night in question. The claimant stated at that meeting that he was in a lazy mood that evening. At that point in the meeting the respondent offered the claimant the option of calling a witness to the meeting. However, he refused this offer and signed a waiver to that effect.

DB concluded that the claimant was guilty of gross misconduct and decided to dismiss him with immediate effect. A letter confirming this decision and detailing the claimant's right to appeal was dated and posted to the claimant on 28<sup>th</sup> September 2010.

The respondent never received an appeal by the claimant against the decision to dismiss him.

### **Claimant's case**

The claimant was told on 27<sup>th</sup> September 2010 that DB wanted to meet with him at 8a.m the following morning. He was not told what the meeting was about but thought that it might be in connection with an incident that occurred during his shift of 25<sup>th</sup>/26<sup>th</sup> September 2010. However he had also heard rumours about the incident on 22<sup>nd</sup> September 2010. The claimant was not told beforehand that he could bring someone along with him and it was only half way through the meeting that he was told he could have someone from the office as a witness but he was not told he could bring anyone of his own choosing.

With regard to the allegation that he told DB that he was in a lazy mood the claimant told the Tribunal that he used the word lazy but that it was in the context of it being a lazy night. By this he meant that it was a quite night with very little happening.

The claimant told the Tribunal that the "person in the office" would not pay him his back week and other money due to him until he confirmed that he would not be appealing the decision to dismiss him. He also told the Tribunal that he had no intention of appealing the decision in the first place. Having let the respondent know that he was not appealing the decision, the claimant received his back week and other payments he was due.

### **Determination**

The Tribunal carefully considered the evidence adduced at the hearing. Notwithstanding the procedures adopted at the meeting at which the claimant was dismissed and having regard to all the evidence adduced at the hearing, the Tribunal concludes that the dismissal was not unfair.

The Tribunal is satisfied that it was reasonable and fair of the respondent to conclude that the claimant was guilty of gross misconduct. The decision to summarily dismiss the claimant did not diminish his rights under “fair procedure” or “natural justice”, as he was clearly aware of his right to appeal the decision but chose not to exercise that right.

Accordingly the claimant’s claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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