

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE – *appellant*

UD1420/2011

Against the recommendation of the Rights Commissioner in the case of

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms O. Madden BL

Members: Mr M. Flood

Mr J. Maher

heard this claim at Dublin on 26th November 2012

Representation:

Appellant: In person

Respondent: Mr Tim O'Connell of IBEC, Confederation House,
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an employee appeal of the recommendation of the Rights Commissioner reference number r-099474-ud-10/TB.

Respondent's Case

The HR director gave evidence. He looks after the HR function for the respondents 2,900 employees. The respondent provides security services.

When the incident that led to the appellant's dismissal occurred, the appellant was already on a Final Written Warning. Initially the sanction imposed on the appellant was dismissal. The appellant had been on duty on a customer's site. There was an altercation on the footpath outside the fence. The appellant went to photograph the incident. A plain-clothes Garda was arresting a man. The appellant got into a conversation with uniformed Gardaí and as a result he was taken to a Garda station. The respondent's customer was annoyed that the site was left unguarded. The site was unattended for 2 hours.

No charges were pressed against the appellant. On the appellant's appeal the HR director reduced the sanction imposed from dismissal to a Final Written Warning that would stay on the appellant's file for 12 months. The HR director informed the appellant of his decision by letter dated 31st March 2010.

In July 2010 a colleague of the HR director brought an Evening Herald into the office. The paper reported that the appellant had been convicted of three criminal offences. The appellant was convicted on 14th July but waited until 29th July to write to the respondent to inform them of his conviction. The appellant was on sick leave at the time.

A conviction is a serious matter in the security industry. Staff members protect property and life. Staff must be trustworthy. The HR director felt that it was a breach of trust by the appellant not to inform the respondent immediately of his conviction. The appellant should have informed the respondent and not leave them find out through the media.

The appellant returned from sick leave on 30th August 2010 and an investigatory meeting was held on 31st August. The appellant was accompanied by his shop steward. The assistant HR manager decided to dismiss the appellant.

The appellant appealed the decision to dismiss him to the HR director. The appellant was appealing his conviction which he believed resulted from perjured evidence. The HR director was annoyed when the appellant referred to his conviction as being like the small print in an insurance policy. All security officers must hold a licence from the Private Security Authority. Following his conviction the appellant would be unable to renew his licence and as a result the respondent could not employ him. A criminal conviction is specifically listed in the respondent's employee handbook as gross misconduct.

The HR director wrote to the appellant on 22nd September 2010 to inform him that his appeal against dismissal had been unsuccessful.

Appellant's Case

The appellant gave evidence. The first incident happened on 19th February 2010. He was on duty on his own on a customer's site. Something was going on outside. A man was lying on the ground and another man was on his back. The man on the ground said that he could not breathe. The appellant phoned for an ambulance. The man on top took out his baton so the appellant realised he was a Garda. The appellant was filming the incident on his phone. A uniformed Garda arrived on the scene and took the appellant's phone. The appellant took out another phone. He was handcuffed and taken to a Garda station. He was later released and after 6 weeks all charges were dropped. He was given a Final Written Warning and moved to another site.

The appellant had been mortified to find himself splashed over the front page of the Evening Herald. The newspaper's court reporter spoke to him but the appellant did not put the story into the media. He accepted the need to inform his employer of his conviction and he did so when he could.

The appellant appealed the decision to dismiss him because his conviction was unsafe. He was also seeking to have his PSA licence renewed. The appellant considered that the

espondent's procedures were fair. The appellant accepted that when he was given the Final Written Warning he did not tell the respondent that he was under threat of prosecution.

The appellant established loss for the Tribunal.

Determination

The Tribunal carefully considered the evidence adduced. The Tribunal is satisfied that the procedures used to dismiss the appellant were reasonable and fair. He was given written notice of meetings and was represented by his shop steward. The appellant was given the opportunity to put his side of the events.

The respondent was faced with a situation where the appellant was employed as a security officer and as such was legally required to be licensed by the PSA. However following conviction this licence would not be renewed. Under these circumstances the Tribunal finds that the dismissal of the appellant was not unfair. The appeal against the recommendation of the Rights Commissioner under the Unfair Dismissals Acts 1977 to 2007 fails. The recommendation of the Rights Commissioner is upheld.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)