

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER – *appellant*

UD27/2011

against the recommendation of the Rights Commissioner in the case of

EMPLOYEE – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr J. Hennessy
Ms S. Kelly

heard this appeal at Clonmel on 19th September 2012

Representation:

Appellant: Mr Chris O'Donovan of IBEC,
Confederation House, 84/86 Lower Baggot Street, Dublin 2

Respondent: Mr Pat Neill of Clonmel Trades Council,
15 Bolton Street, Clonmel, Co. Tipperary

The determination of the Tribunal was as follows:-

This case came before the Tribunal as an appeal by an employer against the recommendation of the Rights Commissioner reference number r-092120-ud-10/GC.

The claim of constructive was heard de novo by the Tribunal.

Respondent's Case

The respondent worked as a security officer on a client's site from March 2007 to November 2009. He had a good record and got on well with the client's staff.

On the 3rd November 2009 he had just come on duty when he stopped the client's site security manager who drove out through an unauthorised gate. The respondent searched the van. The site security manager said well done to the respondent.

The area supervisor phoned the respondent and informed him that he was being removed from that site for abusing the security manager. The respondent was annoyed because he had done nothing wrong. He enjoyed the job and got on well with the people.

The respondent was assigned to the DG site. His first day on this site was training. Then he was on sick leave for a week. He returned to work but the DG site was adequately staffed and there was no work for him. The respondent had no job, he was in limbo.

The respondent phoned the area supervisor. The area supervisor said that there was a position on the G site. If the respondent did not accept this position he would be made redundant. The respondent accepted the position and the resulting drop in salary.

When he first went to the G site the respondent expected that the area supervisor would show him the ropes. The site security manager for site G told the respondent that the area supervisor was not on site and was not expected. The respondent phoned the area manager twice but got no answer. The respondent had difficulty understanding what his colleague on the site said to him. The respondent went home and did not come to work the next day.

Two or three days later the area supervisor phoned the respondent to ask what was he going to do. He decided that he would return to work. On the following Monday the operations manager phoned the respondent and suspended him. The respondent would face disciplinary proceedings for leaving work and for going AWOL. The respondent then explained to the company that he could not work for them further. He could no longer trust them. The respondent did not accept that it was commonplace in the industry for people to be moved from site to site. It had not happened to him before.

The respondent did raise the question of redundancy but the operations manager said no. There was a position available for the respondent.

Appellant's Case

The operations manager gave evidence. 400 people work out of the Cork office. There were no difficulties with the respondent's employment until the site security manager phoned the operations manager. The site security manager said that he had no issue with the respondent stopping him. However he was aggrieved by the manner of the respondent's approach. The site security manager insisted that the respondent not return to the site.

At that time there was a massive downturn on that particular site. The security contract was under review. The area supervisor phoned the respondent. The operations manager himself phoned the respondent. It was not a disciplinary matter. The respondent's contract allowed him to be moved to other sites. Security officers are regularly moved. People become complacent and a move re-energises them. When a person moves location the appellant pays make up time if they are not rostered for a full week.

When the respondent moved to the DG site he turned up for a day and then went sick. The respondent saw a roster on the wall. DG was a four person site and there were four assigned there. The respondent thought that there was no job for him. However the intention was to reassign one member of staff to another site. The respondent was unhappy about the move. The client had asked that he be removed but the operations manager had a job for him. The operations manager met with the respondent to discuss his difficulties. The respondent asked

for redundancy but the operations manager said no, there was a job for him.

The respondent returned to work on 27th December 2009. On 29th December the respondent was to report for work on the G site. A colleague on site was to show him what to do. The area supervisor was on leave that day. The respondent stayed on site for an hour and left the site. The following day the operations manager was informed that the respondent had not reported for work. He had broken their agreement.

The operations manager suspended the respondent without pay pending disciplinary proceedings. The respondent wrote to the operations manager on 6th January 2010 resigning his position.

Determination

The Tribunal carefully considered the evidence adduced in this case. As this is a constructive dismissal claim, the burden of proving that he had no reasonable alternative but to resign his position, rests on the respondent. The Tribunal accepts that the respondent was upset and inconvenienced by his transfer to another site, while recognising that the transfer was an operational necessity for the appellant. The Tribunal finds that there was no compelling reason for the respondent to leave site G on 29th December 2009. The respondent tendered his resignation before the disciplinary process had run its course.

The Tribunal finds that the respondent was not constructively dismissed. The Appeal under the Unfair Dismissals Acts 1977 to 2007 succeeds and the recommendation of the Rights Commissioner is upset.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)