

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE – **Claimant**

UD2226/2011

against

MN2270/2011

EMPLOYER - **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Dr A. Courell BL

Members: Mr D. Morrison
Ms A. Moore

heard these claims at Sligo on 15 May 2013

Representation:

Claimant:

Respondent:

The determination of the Tribunal was as follows:

It being in dispute between the parties it fell to the claimant to prove the fact of dismissal.

The claimant worked as a security guard at a retail store (the store) from January 2006. He was employed by a security service provider but generally reported to the store manager. On 11 February 2011 his employer wrote to the claimant to advise him that, as the employer had lost the contract to provide the security service at the store, his employment would transfer to the respondent pursuant to a Transfer of Undertakings which was expected to occur on 25 February 2011. The claimant transferred across to the respondent on 25 February 2011 and, after some initial issues about days off and overtime rates, the claimant accepted that his terms and conditions were the same after the transfer as they had been before it. He signed a contract with the respondent on 28 February 2011.

On or around 13 March 2013 the claimant was injured during a sporting fixture as a result of which he was hospitalised for some four weeks. During his recovery from the injury there ensued an investigation into a possibly serious health issue. All this resulted in the claimant not being fit for work for several months. The claimant's position was that he submitted medical certificates on a weekly basis throughout his time off work. The claimant opened to the Tribunal a note from his GP dated 27 July 2011 to the effect that the claimant had been certified continuously off work with

thesporting injury from 7 October 2010. The claimant's position was that the October 2010 reference was a mistake on the part of his GP.

During July 2011 the claimant visited the store and met the person who was performing the security guard duties at the store. It was the claimant's position that the guard told him that he (the claimant) had been replaced as security guard at the store. On or around 18 July 2011 the claimant spoke to his supervisor (TS) on the phone; Arising from this conversation the claimant wrote to the HR department of the respondent in the following terms on 20 July 2011.

"I was informed on Monday 18th July by phone per TS that my job was gone and there is somebody fulltime in my position. I was shocked to hear that my employment status had changed while I was on sick leave. I have sent sick certificates to you on a weekly basis regarding my recent hospitalisation and sickness. I would appreciate it if you confirm in writing my employment status with the company. I look forward to your reply within the next seven working days"

On 3 October 2011 the claimant sent an email to TS in the following terms

"TS I the claimant would like to give 2 weeks notice to ya as from Wednesday the 5th of oct... I would be great full if ya could let me no if ya want me to work my notice...thanks claimant"

The claimant's position was that he as he got no reply to his letter of 20 July 2011 he then sought his P45 from TS and that eventually TS told him that he would only get his P45 were he to resign and that he had therefore been forced to resign under duress.

Determination:

When being questioned by a member of the Tribunal the claimant conceded that TS had offered him work at a location other than the store. This is inconsistent with his previous assertion that his job was gone. During cross-examination the claimant asserted that the reason he resigned was that without a P45 he had received no payments from Social Protection. Documents tendered on behalf of the claimant show that he was in receipt of illness benefit from 10 March 2011 until 22 October 2011. The Tribunal does not accept the claimant's evidence that his resignation was given under duress. It follows that the Tribunal is not satisfied that the claimant was dismissed. Accordingly, the claims under both the Unfair Dismissals Acts, 1977 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 must fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)