

## **EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM OF:**  
EMPLOYEE ,

**CASE NO.**  
UD2274/10

against

EMPLOYER

under

### **UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. D. Moore  
Mr. O. Nulty

heard this case in Mullingar on 5 July 2012, 27 March 2013 and 9 May 2013.

#### **Representation:**

Claimant:

Respondent:

The Tribunal heard evidence from the claimant and the respondent.

The claimant commenced employment on 6 May 2009 and worked for company N. He was employed as a security officer. A transfer of undertaking occurred on 1 December 2009 when the respondent took over the business and the claimant was duly notified. He was offered work in the new company. His employment was continuous.

In or around late April 2010 the claimant had a family bereavement and took a week off. Following his time off he subsequently telephoned his manager enquiring about his shifts. He was told that his Private Security Authority Identity Card had expired since 4 April 2010 and was asked to renew his licence. He could not be rostered until a new licence had been issued.

Some time after 6 May 2010 he telephoned ROR (the respondent's general manager). ROR said that a letter had issued to the claimant by registered post informing him that his employment was terminated as he had not renewed his licence. ROR said he had proof that the claimant had signed for this letter. The claimant subsequently visited the Post Office and the letter had been held there for him for approximately two weeks.

The claimant had taken the necessary steps and submitted his application to the Private Security Authority for the renewal of his licence.

The respondent did not dispute the claimant's evidence. The respondent company took over security contract work from company N. A list of employee details was handed over to the respondent company. From the details supplied it appeared that the claimant commenced employment on 11 June 2009 and that he did not in fact have one year's continuous service.

The claimant had been asked on several occasions to renew his security licence as it had expired in early April 2010. As the respondent did not hear back from the claimant that he had renewed his security licence they felt they had no option but to terminate the claimant's employment. This was confirmed in a letter to the claimant dated 17 May 2010 from the respondent.

### **Determination:**

The Tribunal is satisfied that it has jurisdiction to hear the case and that the claimant has the requisite one year's service.

The Tribunal, after hearing sworn testimony from witnesses for the respondent and from the claimant, had to consider whether or not the respondent had followed its own procedures or if the claimant had dismissed himself by having no licence. It was felt that there had been a massive conflict of evidence such that the truth might have been somewhere in the middle. The testimony of the respondent contained references to what could not be recalled or what would have been done as distinct from what had actually been done.

There was an onus on the claimant to get a licence. The Tribunal was, however, unanimous in its view that there had been an error with regard to the 30 April 2010 letter sent by the respondent to an address where the claimant no longer lived. There was a clear onus on the claimant to have a licence in place but a reasonable employer should have sent registered correspondence to the correct address. The respondent could have brought the claimant in to a meeting. The claimant could have been told that he would get no work until he got his licence.

The Tribunal was not persuaded that the respondent had an early warning system about the expiry of licences. There was an onus on the respondent to justify the dismissal of the claimant. The respondent did not do this or follow its own procedure. However, it was clear that the claimant had to apply for his licence. There was no onus on the respondent to have an early warning system but it did not have to take the opposite step of dismissing the claimant.

The Tribunal finds that the unfair dismissal claim succeeds but, taking everything into consideration, unanimously finds that the claimant contributed significantly to his dismissal. Finding that the appropriate redress is a small compensation award, the Tribunal unanimously assesses this at €6,000.00.

Accordingly, allowing the claim under the Unfair Dismissals Acts, 1977 to 2007, the Tribunal, finding that the claimant contributed significantly to his dismissal, unanimously deems it just and equitable to award him compensation in the sum of €6,000.00 (six thousand euro) under the said legislation.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

