

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE
- *claimant*

MN1416/2011

UD1314/2011

Against

EMPLOYER - *respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr G. Andrews
 Mr F. Dorgan

heard this claim at Limerick on 18th April 2013 and 11 June 2013.

Representation:

Claimant:

Respondent:

Respondent's Case:

The respondent is a management company. It manages a shopping centre wherein the claimant was employed as a security officer. The company has twelve employees. Tenants of the shopping centre pay a service charge to the management company. The company runs a safe and secure environment. JK is Director of Management Services. All incidents that occur are recorded in the Centre's logbook.

The claimant was inducted in all aspects of operation and procedures regarding the running of the Shopping Centre, its environment and equipment. He held a PSA licence. A major part of his role was to deal with shoplifters, tenants, undesirables and people he was unsure of. The claimant had a clear understanding of the behaviour expected of him. He was provided with a company handbook and understood its contents. He was also provided with a contract of employment which he signed on 10th November 2007.

The Security Officer is the first point of contact in the shopping centre and it is very important that the officer acts in a fair, reasonable and proper manner.

On 26th May 2011 JK received a telephone call from his secretary. He was told that there was an interaction between the claimant and tenant TK the previous day. The manager on duty that day MT tried to mediate and settle the matter between the claimant and TK but was unsuccessful. Three security officers had previously made complaints against the claimant.

The following day JK spoke to his secretary and to tenant TK. A complaint of verbal abuse was made by TK of store GB against the claimant. He viewed CCTV footage of the incident.

On 27th May 2011 JK together with TOS from the company met the claimant and his work colleague O. He outlined the interaction that had occurred. The claimant responded that he had nothing to say or add.

By letter dated 1st June 2011 the claimant was suspended with pay and invited to a disciplinary meeting on 3rd June 2011.

JK took statements from TK, GB, Security Officer and JB. He interviewed two other employees of another store but they both refused to give statements.

The claimant and his union representative attended a disciplinary meeting on 3rd June 2011. At that meeting the claimant was presented with a copy of TK's written complaint and asked for the claimant's response. The claimant responded that he did tell TK to "f... off back into her own shop" but that he did not abuse her. He said she provoked him by telling him that a certain individual was barred and that he should not be in the centre and that she was telling him to do his job. TK also said that security in the centre was useless. The claimant was adamant that he did not abuse her. The claimant was also provided with a copy of GB's statement. He contended that GB could not have heard what was reported.

The claimant contended that he was under mental stress at the time and acknowledged that he was not performing his role in a proper manner. He said he would not behave in such a manner again. The claimant's representative accepted that the claimant required help with anger management. JK confirmed that the claimant had two live warning letters on his file, one for attitude towards a work colleague and the other for time keeping. The claimant said that he did not want to lose his job and his home.

No decision was made that day and the claimant remained suspended.

JK considered the evidence and statements taken. There was an allegation of threatening abuse. He felt the statements from GB and JB were overwhelming. The claimant had been approached by a female employee to assist in a store and he did not act reasonably. It reflected poorly on the company.

JK was satisfied that he had complied with procedures set out in SI 146/2000, the Code of Practice on Grievance and Disciplinary Procedures.

The claimant was invited to a disciplinary meeting on 10th June 2011. He attended with his union representative. JK told the claimant that he had considered all the evidence and considered all representations made by the claimant and on his behalf. The respondent did not rely on the CCTV footage when he arrived at his decision to dismiss the claimant.

The company had come to its decision prior to the disciplinary meeting on 10th June 2011 and had typed up a letter of even date in which the claimant was informed that the company was left with no option but to terminate his employment with effect from this date.

He was afforded a right of appeal but chose not to appeal the termination of his employment.

GB, the security officer that witnessed the incident between the claimant and the tenant gave evidence. GB did not witness the initial altercation with the tenant. GB was talking to the tenant who was very upset, crying and informed him that it was because the claimant had abused her. GB then asked the tenant to stop talking as the claimant was approaching. The claimant then started abusing her again and behaved in an intimidating manner towards the tenant. GB was shocked at the claimant's behaviour. GB and the claimant then walked away to follow the 'undesirable.'

It is normal for a tenant to report an 'undesirable' to the respondent; therefore there was no provocation for the claimant's attitude towards the tenant. A tenant can either, ring the security office, press a panic alarm or approach a security officer with a concern. GB received full and comprehensive training as per the handbook to handle all situations in accordance with the respondent's policies.

GB initially reported the incident to the security office and made his statement on his return from annual leave on the 30th of May. He did not encourage the tenant to make a complaint against the claimant. GB asked the tenant to stop talking as he knew from past incidents that the claimant 'would go berserk.' GB is a shop steward and attended a previous disciplinary meeting with the claimant on the 13th of January 2011. The outcome of this meeting was communicated by letter to the claimant a week later.

An employee of another tenant in the shopping centre gave evidence. As he was returning trollies to the premises he worked in, he witnessed the claimant being loud and abusive and also people gathered around watching the argument take place. He made his statement on the 26th of May.

Claimant's Case

The claimant has worked as a security officer for the respondent for three years. On the 26th of May a tenant approached the claimant and pointed out an 'undesirable' saying, 'who the f**k is he and what's his f**king name.' She said that I'd know who the undesirable was. She went on to say that, (the claimant) was afraid and nothing but an ignorant little boy and that the security was a joke. The claimant responded by saying, 'f**k off back into the shop and mind your own f**king business.' The claimant had known the tenant for three years and he had a good relationship with her; *"(the tenant) was a friend and anyone who knows me knows that's just the way I speak."* The claimant then saw her talking to GB and approached them. Another argument ensued with raised voices and inappropriate language.

MT later asked the claimant what had happened and asked him to apologise to the tenant. The claimant approached the tenant with MT, apologised and shook hands. As far as the claimant was concerned that was the end of the incident.

The following day the claimant was called to the office and informed that the tenant had made a complaint. The statements were not shown to the claimant. The claimant was suspended which

was confirmed by letter dated the 1st of June 2011.

At the ‘disciplinary investigation’ meeting of the 3rd of June 2011 the statements were put to the claimant. The claimant did not respond to the allegations as his union representative was unavailable.

A disciplinary meeting was held on the 10th of June 2011. The claimant accepted that his language was inappropriate and that having an argument on the shop floor was unacceptable but maintained that he did not abuse the tenant. He further accepted that the tenant was within her rights to approach him with her concern. The claimant understood that his responses to the allegations would be considered at this meeting, as he hadn’t put forward a defence at the initial meeting due to his lack of union representation.

The claimant was given the dismissal letter dated the 10th of June at the disciplinary meeting of the same date. It stated that, *‘your employer considers that this offence constitutes gross misconduct and warrants summary dismissal.’* The claimant decided not to appeal this decision as the named appeal officer (MT) had been involved from the start of the process.

Determination

The Tribunal are satisfied that although the respondent’s procedures were deficient in effecting the claimant’s dismissal the incident itself does merit dismissal. Therefore the claim under the Unfair Dismissals Acts, 1977 to 2007 fails. Consequently the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)