

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

UD591/2008

against the decision of the Rights Commissioner in the case of:

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal

(Division of Tribunal)

Chairman: Ms O Brennan BL

Members: Mr J Reid
Ms M Mulcahy

heard this claim at Dublin on 18th May 2009

Representation:

Appellant(s): In Person

Respondent(s): Mr. Kieran O' Callaghan BL instructed by:
Suzanne Delanhunt , John Glynn & Co., Solicitors, Law Chambers,
Village Square, Tallaght, Dublin 24.

(This case came before the Employment Appeals Tribunal by way of appeal against the decision of the rights commissioner recommendation; r-r-049445-ud-07/JT).

The determination of the Tribunal was as follows:-

Respondent's Case:

The respondent's Supervisor gave evidence. He explained that the respondent company delivered a security service to its customers.

The appellant was employed as a Security Officer in a secure juvenile centre in Dublin. Included in his role as Security Officer was to complete a duty report book with a record of all vehicles and note the times and his observations of the minimum of eight patrols he must perform during his shift. While on these patrols various points around the area were to be "clocked" at the electronic clock points.

On December 10th 2006 the witness arrived at the gates of the centre where the appellant was employed. He flashed his car lights, which could be seen by the appellant, in order for him to open

the gates. He had to let himself in the gates and parked in front of the main reception area. He thought the appellant was in the toilet or the kitchen. On looking through the glass he observed the appellant slumped in the chair asleep. He knocked twice on the glass to try rouse him. When he got inside the reception area he told the appellant that he would have to report the incident to the Operations Manager. The witness signed the appellant's duty report book at 02.10 am. The appellant last recorded patrol was at 12.35 am.

On cross-examination he said that when he knocked on the glass for the second time he indicated the appellant to open the door.

The Operations Manager gave evidence. He received a report from the Supervisor about what had occurred with the appellant. He explained that the centre where the appellant was employed was a high profile site so no one should be able to let themselves onto the premises, as it had to be secure.

He downloaded data from the electronic clocking system in respect of the appellant for the date in question. Times on the system and entries of patrols in the appellant's duty report book differed. The system stated that the appellant did not carry out any physical patrols between 23.10 pm and 03.23 am although in his report book he logged physical patrols at 00.20 am and 03.00 am

He explained that when the appellant was hired he was brought on site with an experienced Senior Officer and shown duties to be carried out. He explained that if the clocking system was not working it was up to the Security Officer on duty to report it.

On December 11th he contacted the appellant to attend a meeting the following day and to bring someone with him. Later that day he had received a call from an alleged acting solicitor on behalf of the appellant demanding the appellant's paperwork. He told them to apply in writing.

On December 12th 2006 the appellant attended the meeting and was again asked if he wanted someone present with him as he had attended alone. He declined. The witness and a previous Manager were present. They went through the report, the clocking printout and he was asked what had happened that evening. The appellant could not satisfy the witness with his answers and said that he thought someone had tampered with the electronic clocking system.

The decision was made to dismiss the appellant for gross misconduct, as set out in the respondent's grievance procedure. He was told he could appeal the decision within 7 days in writing. He did not do so. A few days later he came to the office and was accompanied. The appellant was not happy with the decision and said the respondent's first witness was lying.

On cross-examination he stated that the electronic clocking mechanism was working that evening, no one had reported it faulty and it was extremely hard to damage the system. He agreed that he originally had downloaded an incorrect day of clockings and then downloaded the correct one. When asked he stated that day patrols were not carried out as at that time construction workers were working on site. He explained that he had requested from his client the CCTV footage of the evening in question but the client refused to let them see it. He could not remember if he had told the appellant this.

He stated, when asked, that the 2nd meeting was not an appeal hearing, as the appellant had not requested one in writing.

Appellant's Case:

The appellant gave evidence. On the night in question he was not asleep but reading the newspaper. He had heard his Supervisor drive up but had not opened the door to him as he had not see the car light being flashed. He explained that the glass at the reception area had a mirror image affect at night with the lights on. He also explained that he had to unlock 3 doors to let the Supervisor in and met him at the door. It was all recorded on the clients CCTV. The Supervisor told the appellant that he was going to report him.

On cross-examination he stated that he had received a call on December 11th to attend a meeting the following day. He was not told to bring someone with him and was not offered a representative at the meeting. Some days later he and a friend attended the respondent's premises for his appeal. The same people from the respondent at the 1st meeting were present.

The appellant gave evidence of loss. He had applied for some security positions and did not acquire employment until June 2007 at a lower rate of pay.

Determination:

Having heard the evidence submitted by both parties the Tribunal finds in favour of the respondent. Accordingly, the Tribunal uphold the decision of the Rights Commissioner.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)