

Appeal No. UKEAT/0535/13/SM

**EMPLOYMENT APPEAL TRIBUNAL**  
FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal  
On 16 May 2014

**Before**

**HIS HONOUR JUDGE PETER CLARK**

**(SITTING ALONE)**

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MR M TARZI

APPELLANT

SECURITAS SECURITY SERVICES LTD

RESPONDENT

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Transcript of Proceedings

JUDGMENT

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## **APPEARANCES**

For the Appellant

MR MEHDI TARZI  
(The Appellant in Person)

For the Respondent

MS JULIE BANN  
(Solicitor)  
DWF LLP  
Capital House  
85 King William Street  
London  
EC4N 7BL

## **SUMMARY**

### **UNFAIR DISMISSAL – Reasonableness of dismissal**

The Claimant's appeal allowed forward to Full Hearing on two points:

- (1) related to money claims, now resolved
- (2) question of whether the Respondent had taken reasonable steps to find alternative employment for the Respondent prior to some other substantial reason dismissal.

On the evidence and findings of fact the Employment Tribunal entitled to conclude that they had. Dismissal fair.

Appeal dismissed.

**HIS HONOUR JUDGE PETER CLARK**

1. This case has been proceeding in the London (South) Employment Tribunal. The parties are Mr Tarzi, Claimant, and Securitas Securities Services UK Ltd, Respondent.

2. The Respondent provides security services. The Claimant was employed by the Respondent as a security officer based at Gatwick Airport pursuant to a guarding contract made between the Airport Authority and the Respondent. That employment commenced in July 2010.

3. On 28 September 2012 an incident occurred at the airport involving the Claimant and two members of staff of National Express. As a result the client banned the Claimant from the site. The Respondent carried out an investigation and then sought to persuade the client to lift that ban. They declined to do so. Accordingly the Respondent informed the Claimant that if no alternative work was available for him, he would be dismissed. On their case no other work which he could do was available. A disciplinary hearing took place on 25 October. A charge of misconduct against him arising from the earlier incident was dismissed. However, in the absence of any alternative employment he was dismissed for some other substantial reason. An appeal against that decision was later rejected at an appeal hearing on 19 November.

4. The Claimant brought these proceedings in the Tribunal, alleging unfair dismissal together with claims for pay in lieu of notice and outstanding holiday pay. The claims came before Employment Judge Martin sitting on 2 May 2013. The Claimant appeared in person; the Respondent was represented by Ms Bann, as before me today.

5. By her Judgment dated 7 May Employment Judge Martin found that the dismissal was fair. She dismissed the notice pay claim, the amount outstanding having been paid, and ordered the Respondent to pay £560 in respect of outstanding holiday pay.

6. Written Reasons promulgated on 22 May deal only with the question of unfair dismissal.

7. Against that Judgment the Claimant appealed. His appeal was initially rejected by HHJ Shanks for reasons given in a Rule 3(7) letter dated 7 August 2013. However, at a subsequent Appellant-only oral hearing under Rule 3(10), held on 18 December, Singh J allowed the appeal to proceed to a Full Hearing on two amended grounds settled by Counsel, Mr Benjamin Burgher, then appearing for the Claimant under the ELAAS pro bono scheme. The first ground concerned the money claims; the second related to the unfair dismissal claim and was limited to the question of the Respondent's search for alternative employment for the Claimant following his exclusion from working at Gatwick airport.

### **The Money Claims**

8. The short point is that, upon termination, the Claimant was entitled to both notice pay and holiday pay. The Claimant has now, since the order of Singh J, received the balance of all that he is entitled to. That is an end to the first ground of appeal. The matter has been resolved between the parties.

### **Unfair Dismissal**

9. The sole issue is whether the Judge was entitled to conclude (see Reasons, paragraphs 13-15) that no alternative work was available for the Claimant. I remind myself that questions of fact are for the ET, not the EAT, whose jurisdiction is limited to correcting errors of law.

Ms Bann correctly submits that there is a high hurdle faced by Appellants relying, as here, essentially on the perversity ground. Further Ms Bann relies on the observations of Longmore LJ in **Bowater v NW London Hospitals** [2011] IRLR 331, paragraph 19; the EAT must not, under the guise of perversity, substitute its own Judgment for that of the ET.

10. In advancing his appeal before me today, Mr Tarzi has referred me to an application which he made for a post with the Respondent in Brighton where he lives on 17 December 2012. The e-mail correspondence is at page 63 of the EAT bundle. He says he received no response to that. He also refers to the possibility of another vacancy in Brighton by reference to an e-mail dated 22 November. What he has not been able to do today, and Ms Bann submits was unable to do both at his internal disciplinary and appeal hearings and at the ET, is to point to a job which he could have done and which was available for him prior to dismissal and at latest his unsuccessful appeal hearing. One of the difficulties he faced on the evidence was that he had previously been banned from working on sites occupied by a large customer of the Respondent, Amex.

11. In these circumstances, returning to the second ground of appeal as formulated in Counsel's Amended Grounds, it seems to me, reading paragraphs 11, 12, 14 and 21-22 of the Reasons as a whole, not only was the Judge's conclusion that the Respondent had not failed to take reasonable steps to find alternative employment not perverse, on the contrary it was a finding entirely consistent with the evidence before her on which she made permissible findings of fact. In these circumstances, bearing in mind the high hurdle faced by an Appellant relying on perversity and the words of Longmore LJ to which I referred in the **Bowater** case, I am quite unable to see any ground in law for interfering with the Judge's finding in relation to the question of alternative employment and therefore in relation to her conclusion that Mr Tarzi's dismissal by the Respondent was fair. In these circumstances, this appeal fails and is dismissed.