

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee UD110/2006

CASE NO.

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr. D. Moore
 Mr. P. Woods

heard this claim at Dublin on 5th July and 11th December 2006

Representation:

Claimant : In person

Respondent : Neil M. Blaney & Co., Solicitors, Unit 3, Strand Shopping Centre,
 Portmarnock, Co. Dublin

The determination of the Tribunal was as follows:

Dismissal as a fact was in dispute in this case.

Claimant's Case:

The claimant commenced employment with the respondent as a commis chef in late 2003. By the time of his cessation in December 2005 the claimant held the position of a senior chef. He normally reported to the head chef who generally prepared work rosters for the kitchen staff. The head chef had control and authority over the work roster and those rosters were not presented to the "boss" on a weekly basis for his approval. Up to December 2005 the claimant enjoyed a good working relationship with his colleagues and the respondent. The respondent never furnished the witness with a contract of employment and consequently he had no formal grievance procedure to follow in the event of disputes. Such a dispute rose in December 2005, which led to the claimant's departure from the company. The witness insisted he was not dismissed and never sought his P45. However, following his termination of employment that month he declined the respondent's invitation to re-commence employment in January 2006. The claimant wanted to return to college and denied asking for cash payments in the event of his return.

The dispute centred on the conflicting demands and perceptions of the claimant and the respondent over leave and duty over the Christmas period. The witness stated that there was no notice

advertised or brought to his attention concerning work and leave arrangements for that period. He was aware that the restaurant was due to close on 23 December and re-opening four days later. The head chef who the witness described as his best friend owed him a favour from an earlier arrangement. On 11 December 2005 an agreement was reached between the claimant and that chef that the witness could take leave from 20 to 27 December. The kitchen staff co-operated in that arrangement and since the head chef compiled the rosters the claimant felt confident he could make his own personal arrangements. It was normal practice to seek leave from the head chef. He then proceeded to book a flight for an overseas trip and a family visit.

The next day the claimant received a phone call from the respondent informing him that he had to work up to 23 December. The witness was unable to comply with that as alternative arrangements had already been made. The respondent then offered the claimant another option but that option again clashed with his own personal arrangements. At that stage it was more important for the witness to fulfil his family commitment than to maintain his employment. The claimant said he was aware that his “boss” had a problem with his travel and leave arrangements prior to him putting them into place. However he felt that if the head chef was “ok” with their arrangement then it was also “ok” with his employer. According to the claimant he was dismissed on his day off and subsequently received his P45.

Under cross-examination, the claimant told the Tribunal that the roster was done on a week to week basis. He had a very good relationship with the respondent. He presumed that his leave was approved as he had received no objection before he commenced it. He was dismissed by phone while on leave. The roster would usually be drawn up the night before the week would begin between the head chef and the manager. There was a conversation regarding the roster on the 11 December regarding the roster for the week on the 12 to 18 December. There were five chefs working in the restaurant in total. The claimant said that he had met the respondent one month after his employment ended and was offered his job back. The claimant had decided that he could no longer work for “someone like that”. The claimant established loss for the Tribunal.

Respondent’s Case:

The respondent was the only witness. He told the Tribunal that the claimant had worked his way up from a kitchen porter to a commis chef over the three years that he had worked in the restaurant. He was promoted to second chef in October 2005. This involved standing in for the head chef when absent. He was responsible for the rostering arrangements for the whole restaurant. If there were any changes to be made, he would make them himself. In the normal sequence of events, the roster was done on a Sunday for the week ahead.

For the month of December, he did the roster for three weeks to cover the holiday period. When he saw the claimant had applied for leave, he told the claimant that he needed him to work over the Christmas week. He told the claimant that he had extra responsibilities since his promotion and he couldn’t be released for leave. He went to meet the claimant in the second week of January and offered him his job back. The claimant wanted to be paid cash-in-hand. He refused.

Under cross-examination, the respondent said that he did not speak personally to the claimant when the claimant requested his P45. He had offered the claimant a compromise regarding the leave, but the claimant would not co-operate. It was usual for the head chef to approve the roster on a weekly basis but this roster was a special one because it took in the Christmas period which was the busiest time for the restaurant.

Determination:

The Tribunal considered all of the evidence adduced in this case. It was conceded by the respondent that he was unable to counter the evidence given by the claimant that the claimant had approved his leave with the manager through the normal channels before he booked his tickets for travel and made his arrangements to go to London for the Christmas period..

The Tribunal determines that the respondent acted unreasonably in the sanction imposed on the claimant, as the claimant was under the impression that he was taking authorised leave until the respondent approached him with a problem.

In early January 2006, the respondent offered the claimant his job back but the claimant was of the opinion that the working relationship had broken down irrecoverably. The Tribunal notes with regret that the circumstances of the dismissal arose, as there was clearly significant respect between the parties prior to this incident.

The Tribunal determines that the claimant was unfairly dismissed and award him the amount of€2000.00 under the Unfair Dismissals Acts, 1977 to 2001. This is to reflect the loss suffered by theclaimant but also taking into account his failure to mitigate that loss.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)