

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

MN236/2006

UD391/2006

against
Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr. D. Morrison
Mr M. McGarry

heard this claim at Letterkenny on 13th March 2007

Representation:

Claimant(s) : Mr. Donough Cleary, Cleary & Co., Solicitors, The Diamond, Raphoe, Co. Donegal

Respondent(s) : Mr. Gerry Doyle, Connelly Doyle, Solicitors, 39, Lr Main Street, Buncrana,
Co. Donegal

The determination of the Tribunal was as follows:-

At the outset it was agreed that the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 was withdrawn.

Claimant's Case:

The claimant gave evidence. He stated that he had been employed by the respondent as a fitness instructor and lifeguard, working in the leisure centre located next to the hotel. He confirmed that he lived 20 minutes drive from his place of employment.

There were two shift patterns, 6.30 am to 2 pm and 2 pm to 11 pm. The late shift was later changed to 2 p.m. to 10 p.m. At the beginning of his employment there were 3 other full-time fitness instructors but at the end of his employment he was the only one. His duties included compiling fitness programs for both members of the club and hotel residents, the upkeep of cleanliness on the premises and the pool. He reported to a Manager and an Assistant Manager and had no problems during the early years of his employment.

In the early years it was up to the Manager and Assistant Manager to check the pool levels. He explained that a valve was located in the plant room to increase the water level in the pool. The valve was turned on and the water level in the pool would increase. This process took about 15 minutes to complete and then the valve was turned off. The system was unusual as no noise could be heard from the water level increasing in the pool. The Assistant Manager left the respondent's employment in 2004 and was not replaced. All the remaining staff took turns checking the levels but this had not been part of his original job description.

In May 2005 the Manager raised issues with him concerning his time keeping and the fact that he had not carried out 12 out of the 26 pool checks assigned to him. A pool check involved taking a sample of pool water, adding a tablet and checking the chlorine levels. This was not a formal meeting but he did receive correspondence concerning the matters. He agreed that he may have arrived late for work on some occasions but only by a few minutes and he had stayed on after the end of his shift. He improved his time keeping. The Manager left in December 2005.

The claimant said he attended an interview in late December 2005 with one of the owners and the General Manager for the position of Manager for the leisure centre. The co owner raised the issue of his time keeping and the General Manager agreed that it had improved. The issue of the non-completion of pool tests was not raised.

On January 25th 2006 he received a telephone call from the General Manager to come to work early. He attended the premises at around 11 am. and was asked to go to the office. The General Manager informed him that the pool area had been flooded that morning. The owners of the respondent company had witnessed the damage. He was told that he was the last employee present the previous evening and was to be let go. He was not asked for an explanation. He told the General Manager that there was a problem with the valve and did not admit to leaving the valve on but could not remember if he had switched it on or off. He explained to the Tribunal that the pool levels were checked once a week, usually between the cross over of shifts during the day and not at night.

He explained that it was his understanding that it was the responsibility of the owners to hire and fire the staff. He had no written contract of employment. The claimant gave evidence of loss.

On cross-examination the claimant stated he had applied for employment but had informed potential employers that he had been sacked from the respondent.

When put to him he accepted the contents of the written formal warning of May 11th 2005 concerning "lates" and the non-completion of pool tests. He accepted he had been shown how to check the pool levels but had no formal training. He explained that he had reported in the past of a fault in the pool valve and as far as he was concerned it had been repaired. He explained that on the evening in question he had cleaned up, finished work and left. He agreed that he had a few missed calls on his mobile phone the following day. He said, when put to him, that the issue of leaving the valve on in the past had not been put to him at the interview for the Manager's position.

When asked by the Tribunal, the claimant stated that he had no prior knowledge of what the meeting of January 25th 2006 was about. He stated that the General Manager had told him, that he, the General Manager, had been instructed to let him go.

Respondent's Case:

The General Manager gave evidence on behalf of the respondent. His duties were to manage the day-to-day of the entire hotel and leisure centre.

On May 11th 2005 the claimant received a letter, from the then Manager, concerning the claimant's "lates" and non-completion of pool tests. On one occasion the claimant was 40 minutes late for work. He explained that pool tests and levels were checked daily and at no specific time. Pool levels were altered every 3 to 4 days and when pool levels were increased, you could see the water in the pool rise. He could not recall the claimant submitting a complaint in the past about the pool level valve. He explained that it took a certain amount of time for the pool level to overflow. When asked, he said that there was no alarm system in place to alert staff that the pool level would overflow.

On January 25th 2006 the person on the first shift of the day alerted him that the pool had flooded the area. This person turned off the pool level valve to stop the flow. The witness went to the leisure centre and witnessed flooding on the carpets and paintwork, there was extensive damage. He spoke to the owners of the respondent company, who came down to witness the damage. It was agreed that the matter would be put to the claimant. The witness told the Tribunal that the claimant was aware of the problem when arrived for the meeting that day. He asked about the claimant's previous night's shift and outlined that he, the claimant, had left the pool valve on. The claimant said that he must have left the valve on. The witness explained that in light of the claimant's admission and his previous history, he was left no position but to dismiss the claimant.

On cross-examination the witness stated that he had spoken to the claimant before May 2005 about his time keeping. He explained that there had been incidents of the valve being left on in the past after the claimant's shift but only 2 incidents, including January 24th 2006 were serious. When asked, he said that he had never checked the pool levels. He explained that it was the owner's ultimate decision to dismiss the claimant but he ran the premises day to day.

Determination:

Having the evidence adduced by both the claimant and the respondent, the Tribunal finds that the respondent failed in carrying out fair procedures and that claimant was unfairly dismissed. The Tribunal awards the claimant the amount of €5,750 under the Unfair Dismissals Acts, 1967 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)