

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

MN740/2005

UD990/2005

WT322/2005

against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms C. Egan B.L

Members: Mr. D. Morrison
Mr. M. McGarry

heard this claim at Castlebar on 10th May 2006
and 20th October 2006

Representation:

Claimant(s): Mr. Daniel Coleman,
Coleman & Co., Solicitors, Main Street, Ballinrobe, Co. Mayo

Respondent(s): Mr. Colm Costello, C/O Michael Carroll, Solicitors,
Bridgewater House, Islandbridge, Dublin 8

The determination of the Tribunal was as follows:-

Appellant's Evidence

The appellant began working for the respondent as a part-time employee and became a member of full time staff in 2001. No contract of employment was signed, however he did sign a booklet but was unsure what it was. His role as a junior attendant was to run the catering trolley through the carriages and look after the shop. He did not recall being given any grievance procedure or disciplinary procedure and did not know how to go about making a complaint.

Responsibilities at the end of each duty consisted of doing a stock take and balancing the books. He was never shown how to do the cash properly even though he had requested to be shown on numerous occasions. The approach taken was that if he, the appellant, was accompanied on the train by a senior member of staff they would do the cash together, if he was on his own he would do his best. On the 9th and 10th March he received a reprimand for incomplete paperwork, the appellant had passed the cash onto an attendant who did not fill out the lodgement book. The appellant did not know this as he was on holidays.

Issues arose with one of his colleagues with whom he worked from the start. At first the appellant thought his colleague had a grudge against him. His colleague would stand on his toes in the dining car, shove past him and kick him in the shins. He felt his colleague tried to provoke him. His colleague always tried to put him down; he would curse a lot at him and never call him by name. The claimant felt he was treated differently to other, he was never given the handy trains. The same colleague was having a relationship with another employee and it had an impact on the appellant. It became awkward to work with the other employee, and he felt he was left to do her work.

He felt his colleague tampered with his time sheets resulting in him losing hours. The appellant filled in his own time sheets and kept a record of the hours worked. The appellant approached the catering manager to outline his difficulties; he was to look into it for him. He told the catering manager that he felt his colleague was a bully. He heard nothing for about 3 or 4 months. He made a further appointment and went to Dublin to meet the catering manager again but he was not there. He was never advised that the meeting was cancelled. At that stage he went to his union representative and did not try to reschedule the meeting.

The union representative was to look into it, however nothing happened, that was mid 2004. The appellant continued working but became stressed at the thought of going to work. He took some time off, as he couldn't face that particular colleague. It affected his relationship with his girlfriend. The appellant dropped out of sports and felt he just went from bed to work.

At the start of his employment, a sum of money went missing from the dining car, as a result, he was searched by the same colleague in front of members of the public. The appellant had nothing in his pockets only a few coppers and some pills. His colleague made a comment about him pill popping in front of everyone. While at a 21st birthday party for another work colleague which he attended with his girlfriend, the colleague came up to the appellant at the bar and stood on his feet. The bar was full and it was not obvious to everyone what he did. He would be called in on days off at very short notice. The appellant did not leave because he felt the way he was treated would stop but it didn't.

Evidence on loss was given.

The appellant's girlfriend gave supporting evidence on the incident at the 21st birthday party, however in cross examination the witness stated she did not see the incident.

Respondent's Evidence

The catering manager gave evidence and stated that the claimant was already employed when he came on board. He was always well presented, nicely mannered and had no difficulties with him. He remembered an incident where the claimant, the colleague in question and his girlfriend were all at a meeting. He took notes at the meeting but mislaid them. The incident revolved around the female colleague giving the claimant orders and the claimant not following them, it resulted in a verbal confrontation between the two. He did not recall the claimant making a complaint about his colleague kicking him in the shins, standing on his toes or physically pushing past him. The only incident was about the claimant being searched when money went missing.

The appellant asked to see the catering manager one evening in March 2005. He handed the catering manager a sealed envelope. In it was his letter of resignation. The catering manager asked if there was anything he needed to know and explained that there was a whole host of people available to help the appellant if required. The appellant told the catering manager that there was no problem he just wanted to try something new. The appellant never said to him you know what it is about, if he did make such a comment he would have pursued it.

He had contact again with the claimant when he looked for a reference, the respondent does not

normally give out references but his name could be used as a referee.

On the **second** day of the hearing an ex-colleague and supervisor of the claimant gave evidence. He explained that he was stationed in Heuston Station and it was part of his duties to check time sheets, training and supervise staff. The claimant was stationed in Westport. He explained that he would only see the appellant for about an hour a week.

The witness stated that he had heard the appellant's evidence and refuted it. He had not bullied him, stood on his toes, shoved him or kick him in the shins. When a sum of money had gone missing from the dining car he had not carried out an illegal search of the appellant's pockets. He said that he had asked the appellant if a wrong receipt had been issued or the wrong change given. He had not asked the appellant and his colleague to empty their pockets. When put to him he said that his prior relationship with a colleague had not affected the appellant at all.

On cross-examination the witness said that he had attended a 21st birthday party with his fiancé. He said that he had seen the appellant sitting in an alcove but that was it. He explained that he had not compiled the appellant's rosters but would contact him if a staff member was needed to 'cross over' to another train mid route. He said that he never tried to inconvenience the appellant with late shifts. He said that he had never 'lorded over' the appellant because he was a supervisor.

Determination

Having heard all the evidence adduced by both the appellant and the respondent the Tribunal finds that there was a failure on the appellant's part to substantiate the allegations made. The Tribunal finds that the appellant was not constructively dismissed. However, the Tribunal notes that the respondent's procedures seem inadequate when dealing with issues such as those brought up in evidence by the appellant.

No evidence was adduced relating to the claim under the Organisation of Working Time Act, 1997 and therefore the claim fails.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 was dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN) Kate T.O'Mahony

(MEMBER) D. Morrison

(MEMBER) M. McGarry