

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD1153/2005

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr. M. Forde
Mr D. McEvoy

heard this claim at Tralee on 20 February and 19 April 2007

Representation:

Claimant: Ms. Siobhán T. Foley, Siobhán T. Foley & Co., Solicitors,
4 Ashe Street, Tralee, Co. Kerry

Respondent: Mr. Michael Fitzpatrick, Pierse & Fitzgibbon, Solicitors,
Market Street, Listowel, Co. Kerry

The determination of the Tribunal was as follows:

Dismissal was in dispute in this case.

Claimant's Case:

The claimant told the Tribunal that she commenced employment with the respondent company in May 1995. She worked in the laundry for four years and thereafter, as breakfast cook, in the kitchen for about five years. She was a month short of 61 years of age at the time her employment ended.

On 2 July 2005 while the claimant was doing the preparatory work for cooking the breakfasts the general manager (GM) entered the kitchen, turned off the lights and then left. He did not say why he turned them off but it was usual for him to turn them off; he probably did it to save electricity. He returned shortly after and asked the claimant why the deep fat fryer was on. There were sausages cooking in it at the time. GM said, "It's no f***ing good talking to you" and banged his fist hard on the counter. When the claimant reached to remove the sausages GM said, "Stop, I will do the rest of the f***ing cooking myself" and then roared at her, "Get the f*** out of my hotel". When the claimant proceeded to get her bag and jacket, GM roared, "Wait a minute and clean this s*** up before you leave". He came towards her with his fists flying, his eyes wild, put his face up to hers and said, "When I tell you to do a thing, you will do it. I am the owner of this hotel. I am the

boss and whatever I tell you to do, you will do it". He kept roaring and shouting into her face. She was asking him why was he roaring at her and what had she done but he wouldn't answer her. He pointed to the girl washing the dishes and said, "I've a witness." The claimant could not understand why he was mentioning a witness. He started roaring again. The claimant became very nervous because he was (verbally) attacking her in a place where there were knives and hot water around them. She started shaking and had to leave the kitchen. She did not feel well. On her way out he called her "stupid ..." (expletive omitted). She made her way out to the reception area.

The receptionist asked her what had she done and the claimant did not know what to answer. She asked the receptionist to clock her out and she (the receptionist) went to get her timesheet. GM came "flying" out of the kitchen, approached the claimant at the desk, pulled the timesheet forcefully out of the receptionist's hand and said, "I'll do that". When the claimant asked what he was writing on the timesheet he told her that she had no authority whatsoever to see what he was "f... writing.... and to leave the hotel." As she was leaving he told her that he would see her in the office. She went into the office with him. He stood at the door with his hand on the handle. The claimant was at the window. GM turned to her and said; "Look at the cut of you with not a tooth in your head". He started roaring and shouting that he was the boss and the manager. The claimant felt trapped, faint and very hot. She asked him again why was he roaring. He told her that there were many complaints about her from the guests. This was the first she had ever heard about complaints. She told him to bring in the other three waitresses and they would tell him the truth. He replied that he was the manager and the boss and she would not tell him what to do. She told him that she did not feel well and had to get out. He opened the door which banged off the wall and said, "Get the f*** out of my hotel." He closed the door in a way that could have taken her hand off. The claimant left.

The claimant had never received complaints about her breakfasts. Occasionally she had received sweets and money from guests and golfers had complimented her on her breakfasts on numerous occasions. She had a good relationship with GM up until then and did not know what had happened to him that morning: he was acting "like a madman" and had attacked her for no reason at all. Several months prior to July he had told her that a customer had complained about fat on the plate and he (GM) had asked her to cook the sausages in the oven instead of the fryer. When she cooked sausages in the oven they were not well cooked and it was too difficult when the hotel was busy, as the customers would be left waiting for their breakfast. The door of oven was faulty and water leaked out; she had to use a knife or piece of wood to keep the door closed. The claimant had told the manager, who was GM's wife, that she could not do the sausages in the oven and was continuing to use the fryer. The manager made no issue about this but said they would leave it until it was sorted in the sister hotel in Listowel. There had been no further comment made about her reverting to using the fryer until the morning of 2 July. The manager was working some mornings and saw her using the deep fat fryer but said nothing.

She had been trusted to open up the hotel and look after the early morning guests; some mornings she was at work as early as 5-30am. She had never let her employers down and had often been complimented by GM for her abilities She had a good relationship with the family and had been at GM's wedding.

In cross-examination, the claimant told the Tribunal said she felt that GM wanted her out so that he could give her job to another employee who worked in the hotel as a waitress. She rarely met GM in the mornings. On the morning of 2 July 2005 the hotel had put on a special event, which included screening the early morning rugby test match and providing breakfast. Contrary to expectations there was a low turnout for the event. She denied being in a bad humour that morning

and said it was GM who was in bad form that morning. GM had only asked her on one occasion to cook the sausages in the oven. She told the Tribunal that if her own son had behaved as GM did, on the morning, she would “kill him”. She felt that GM should have discussed the matter privately with her in the office rather than shout at her in the kitchen. She had gone into the office with him as she thought he might apologise to her for his behaviour. The receptionist left two weeks later. The claimant was unable to contact her thereafter.

The claimant denied that she walked out of the hotel. Had she done so, she would have been on the phone an hour later because she needed the job and the money. She had not asked for her job back. She had been expecting GM to apologise to her for his behaviour that morning. The incident caused her to lose confidence. She was so upset that morning she could not start her car.

Respondent’s Case:

GM told the Tribunal that his family owns and runs two hotels in the north of the county. He has overall responsibility for the hotel and his wife is its Deputy/Operations Manager. The claimant was an excellent employee and he never had a problem with her. She was always punctual, courteous and friendly. Prior to 2 July 2005 he had, on a number of occasions, asked the claimant to cook the sausages in the oven rather than in the deep fat fryer. This was to obtain a fat free and oil free result; many of his guests were health conscious. The claimant had no problem with his request and agreed to do so. He realised this was a change in work practice and he was trying to bring it in gradually.

On 2 July 2005 he arrived into the hotel soon after 8-00am. As duty manager he inspected the hotel as he usually did. He went to the kitchen and the claimant was on her own there at this stage. He observed that the claimant was cooking the sausages in the deep fat fryer. She agreed with him that they had a previous discussion about cooking the sausages and that she had agreed to cook them in the oven. He then asked her why she was still cooking them in the deep fat fryer and asked her to cook them in the oven. The claimant gave an “affirmative nod”. He had worked with her to gradually bring her around to this change in the work practice. She did not mention that there was a problem with the oven.

About fifteen to twenty minutes later, at around 8-45am, he went to the kitchen with a food order and saw that the claimant was still cooking the sausages in the deep fat fryer. As her manager he had to take it up with her. He said to her that he thought they had a conversation about this a few minutes earlier. She gave no real response but just nodded again. He asked her did she understand why he wanted them cooked in the oven and if she had a problem with it. She replied that she did not have a problem with it. He told her that it was a new method and “let’s give it a go”. Being aware of her age and the type of woman that she was he knew that change would be more difficult for her. He was not in any way aggressive with the claimant. He placed the food order in the kitchen and left.

Shortly before 10-00am he visited the kitchen for a third time. The employee on the wash-up (EW) was also in the kitchen by this time. He noticed that the claimant was just about to drop a new batch of sausages into the deep fat fryer. This was the third time that he had tried to get through to her that morning so he decided to deal with it more formally than he had on the two previous occasions. He called the claimant and asked her why she was putting the sausages in the deep fat fryer when they had already spoken about it twice. She did not respond to him. He told her that he had asked her to cook them in a certain way, that he was her employer and that they would have to try and

resolve the matter. He asked her if she had a problem with his request and she remained quiet. She then told him that there was nothing wrong with her breakfasts. Three times throughout their conversation she told him that her breakfasts were fine.

He had not been aggressive with her, did not hit the counter or use bad language or raise his voice. He would not talk to staff in that manner. He did not tell her that he would do the remainder of the cooking himself or put his fists up to her face or tell her to get out of the hotel. When he left the kitchen and went towards the reception area the claimant followed and said to him, "I don't have to take this from you. I am out of here." This surprised him as he did not have a cross word with her. At this stage, she had taken off her apron, was heading for reception and had her handbag and coat with her. She wanted to sign herself out and he asked the receptionist to sign her out. He did not pull the sheet of paper from the receptionist's hand.

Rather than leave the claimant go he invited her into his office. Once in the office he said, "This isn't a big issue. We can get over it." He asked why she would not follow the simple instruction he had given her. She repeatedly asked him why he was picking on her. He told her that he was just trying to resolve the matter. He knew that she could be headstrong. She was tense and nervous and it had nothing to do with picking on her. He did not raise his voice to her. She said, "I don't have to stand here and take this from you. I am out of here". The claimant then left the office. She left through an open door. He did not bang the door as he was behind the desk during their conversation. The door could not be slammed, as there were restraints on it. He hoped that it would blow over and that the claimant would return to work. He did not replace her that summer. It is difficult to get breakfast cooks. She did not return the next day. He thought that she would take a few days and return the following Monday. He was surprised that she left. They had not had a disagreement before.

His one regret was that he had not contacted the claimant when things had calmed down. He had never dismissed an employee. He employs local people. His mother and the claimant had come from the same village and the two families were acquaintances. He had remained calm throughout their exchanges that morning because he did not want to lose the claimant. He did not dismiss her. He did not agree that cooking the sausages in the oven took too long. If she had a problem, she should have reverted to him and not to his wife. The claimant had told him that she did not have a problem using the oven but she still would not use it.

The Operations Manager (GM's wife) told the Tribunal that the claimant told her that her husband (GM) wanted her to cook the sausages in the oven but that she was continuing to cook them the way she had always cooked them. The witness asked the claimant to tell that to GM herself. The claimant did not give her any reasons for not wanting to cook the sausages in the oven. She thought that the claimant just wanted to make a point about her husband in front of other staff. She was surprised that the claimant left. In cross-examination she agreed that she had contacted the claimant on one occasion after 2 July 2005 and explained that this was because the claimant's daughter had been (seriously) injured in a road traffic accident. She did not think that it was for her to ask the claimant to return to work.

EW (the employee who does the wash-up and was working with the respondent at the time of the hearing) told the Tribunal that she was in the kitchen at around 9-00am when GM came into the kitchen. He greeted them and made himself a cup of tea. When he saw the claimant cooking the sausages in the fryer he told her that he had previously asked her to cook them in the oven. The claimant did not respond. On his next visit to the kitchen he saw sausages in the frying basket and he asked the claimant why she continued cooking them in the fryer. She told him that she was

cooking for two or three more guests and the staff. He turned and walked out of the kitchen. He was not angry or aggressive. The claimant then got her bag and coat. She thought that the claimant was going to smoke a cigarette. She did not recall GM's banging the counter. She did not hear him swearing. He did not wave his fists in the claimant's face. She did not hear any altercation that morning. She had not heard any complaints from the customers about the cooked sausages. Whilst some water did escape from the oven during cooking it was not leaking. There had been a silly argument between them about sausages and it did not get heated.

Determination:

Whilst it is common case that the cooking of sausages was the subject of the exchange between the claimant and the General Manager (GM) on the morning of 2 July 2005 there is a serious conflict of evidence as to tenor and contents of that exchange. The Tribunal, having considered the evidence, unanimously accepts the claimant's version of what occurred that morning. Accordingly, it finds that the claimant was dismissed. As there were no grounds advanced by the respondent to justify the dismissal and as no procedures were applied the Tribunal finds that the dismissal was unfair. Accordingly, the claim under the Unfair Dismissals Acts 1977 to 2001 succeeds. The Tribunal awards the claimant the sum of €3,500.00 in compensation under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)