

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD176/2006

MN99/2006

against

Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Sheedy

Members: Mr. G. Phelan
Mr. A. Kennelly

heard these claims in Limerick on 30 April 2007

Representation:

Claimant(s) :

Mr. Daniel O'Gorman, O'Gorman, Solicitors, Munster House, 75a O'Connell Street,
Limerick

Respondent(s) :

Ms. Caroline Keane, Sweeney McGann, Solicitors, 67 O'Connell Street, Limerick

The determination of the Tribunal was as follows:-

Claimant's Case

Giving evidence, the claimant (hereafter referred to as C) said that she was born in December 1984 and that on 27 November 2004 she had commenced employment at a hotel which belonged to the respondent (hereafter referred to as R). She "was employed part-time doing full-time work". She worked an average of forty to fifty hours per week". She prepared and served meals. She worked from 6.00 a.m. until sometimes as late as 9.00 p.m.. She "worked five or six days per week" and "got about three hundred euro salary through the bank by standing order". Kitchen staff "were on about the same money" as C. C was flexible. She worked when asked to do so.

C reported to the head chef (hereafter referred to as J). There was also a sous-chef (hereafter referred to as G). They gave C her orders. The hotel manager (hereafter referred to as D) never gave C instructions.

C had an incident when a knife was thrown at her. She had been serving at the carvery. A sandwich order came in. She asked a chef to do it. He told her to “f*** off out of it” and to do it herself. She told him that it was not her job and walked away. He threw a knife at her and hit her in the back. It was a butter-knife. This occurred in the kitchen. J spoke to the chef and dismissed him. C and two colleagues had been there. J told C not to laugh and that he (J) had lost a good chef “over” C. This was one or two months before C found out in autumn 2005 that she was pregnant. She had no other problems in her employment at R’s hotel.

C told the Tribunal that she did not get all of her employment contract.

The roster would be put on a noticeboard by J every Tuesday. Asked if she was told to check the roster, C replied that they would all go and have a look at it.

When C found that she was pregnant she “was still working the long hours”. After talking to her doctor she spoke to J, told him she was pregnant and asked if she could cut down her hours to two days per week. J said that she would have to work at least three days. She said that she would rather work just two days. He said that, if she could not work three days, he would have to look for someone else. She agreed to work three days per week. She could not recall the number of weeks for which she worked just three days.

On Thursday 27 October 2005 C was in bed in her mother’s home when a night porter from R’s hotel rang her. (While pregnant she stayed with her mother most of the time.) The night porter told her that she was meant to be at work. She said that she did not know about this. He said that she should have started at 6.00 a.m. for the breakfast. She said that she was sorry and that she would be in as soon as possible because she had to get her chef’s gear. She went to her flat to get her overalls and then went to meet G (the abovementioned sous-chef). C apologised to G and said that she had not known that she was due to work. The night porter had called G in to work because C had not turned up. G told C that it was not her fault. G was C’s superior when J was not in. C went in and said to G that she was sorry for being late but that she had not known that she was meant to be working. She had not been in on the Monday, Tuesday or Wednesday of that week.

For the Tribunal C named a R employee (hereafter referred to as M) who had been meant to ring her but who had not done so. G had told her this.

On the morning of Thursday 27 October G stayed on and started to prepare dinners. At 8.30 a.m. on that morning C had a conversation with J (the abovementioned head chef). J “did not look in great form”. He asked her why she had been late. She told him that it had been because she had not known that she was meant to be working. She told J that G had told her that M had been told to ring her but had not done so. J asked her if she needed a postcard to be invited in to work. He told her that she had woken his child. She said that this had not been her fault.

Asked at the Tribunal hearing if J had been loud or calm, C replied: "In between." She added: "He was kind of raising his voice at one stage. He told me to get my cheffing gear and get out." She replied: "That's grand, John. No problem." She went to the dry food store to get her things. Her stuff was there because she had been late. He followed her and told her to get her things and get out. She felt bullied out of her job and that it was not right to treat someone like that. He said to make sure to tell a lady (hereafter referred to as E) from Limerick Institute of Technology because C was doing a professional cookery course (for which C had to be in a hotel because practice was required). C replied: "That's grand, John. No problem." She left the course of her own accord.

C left R's hotel premises. She "felt bullied and upset". She "felt like curling into a ball and crying".

"Maybe three days to a week after this" C was contacted on her mobile by D (the abovementioned manager of R's hotel). D was J's boss. D said that he wanted to meet her for a Tuesday meeting to talk to her about what had happened. She told him that J had sacked her. D said that he wanted to talk to her about this. She said that she would talk to a solicitor because she would not want to go back because she felt bullied out of work. She told D on the phone that she would not meet him.

At this point in her evidence at the Tribunal hearing, C apologised saying that, in fact, she had spoken to her solicitor first and that she had not wanted to go back after how she had been treated. She had loved her job and her relationship with J had been good but she felt that J had wanted a full-time person.

Under cross-examination, C acknowledged that R had assisted in her gaining a place on a cookery course. Asked how she used to know her roster, she said that she saw it in the hotel. C acknowledged that she had not checked it in the hotel before the fateful final occasion.

It was put to C that J had been annoyed that he had had to get someone else. C replied: "I'd be annoyed." Asked if she had not thought to use the grievance procedure, C said: "That's why I'm here today."

In re-examination, C said that she had been told to sign her employment contract but that no handbook had been available. She was promised it but never received it.

Respondent's Case

Giving evidence, J (the abovementioned head chef at R's hotel) said that he had employed C after she had walked in off the street. He had encouraged her to do a professional cookery course. He had organised for her to get a uniform, books, knives and time off work. After C missed her first interview for the course J asked the course director to reschedule it.

There were no complaints about C's work. One day in the kitchen C told J that she was pregnant. J told the Tribunal that he did not know the date but that "it was in August some time". He stated that he had not treated C worse because she was pregnant. For instance, he put her on a 7.00 a.m. to 3.00 p.m. shift on Saturdays because there was no lunch on Saturdays. C wanted early shifts and so he rostered her early. Some of the times she worked the business was not there to justify bringing

her in. He signed forms so that C could claim unemployment benefit.

It was put to J that C had alleged that she had wanted a two-day week but that he had said that she would have to work three days or full-time. J replied that he did not tell her that she would have to work three days or be gone. He said that he had to “keep people happy and loyal”.

Asked about the butter-knife that was thrown at C, J said that the thrower (hereafter referred to as T) was dismissed on his recommendation. J thought that “throwing a knife was a non-starter”. Appeals by T were “disallowed”.

J told the Tribunal that he did not tell C that he had lost a good chef “over” her. T had not been a good chef and J had not said that he had been one.

J would do the roster. He would try to do it a week in advance. He would try to do it every five days. C normally worked Thursday, Friday and Saturday or Friday, Saturday and Sunday. For that last week C was rostered to have Sunday off. She was rostered for “earlies” on Thursday, Friday and Saturday.

It was put to J that C had said that the sous-chef or M (the abovementioned colleague) should have rung her. J replied that this was not the procedure and that people did not get calls to come in. He did try to accommodate days off but he did not know why C would say that she had been hoping for a call.

On Thursday 27 October the night porter rang J at 6.20 a.m.. There was over a hundred guests in the hotel and no-one from the staff for breakfast. J could not get someone. His baby was upset. R would have to give a credit of sixteen euro per person if people did not get breakfast. These people would not come back to the hotel. When he saw C she said that he should have rung her but he did not tell her to get her stuff and get out. He did not say anything about a postcard but he was annoyed. C did not go to the dry food store. He stayed where C would have to pass him. People get “hotheaded”. He told her to tell E (the abovementioned lady from Limerick Institute of Technology). He thought that C said something like: “Yeah, yeah.”

Subsequently, D (the abovementioned manager of R’s hotel) told J that he (D) had rung C to come in to him.

J told the Tribunal that he had treated C “more than fairly”. When C gave him a form he thought that he had given it back to her the following day. He did not recall a conversation about C working two or three days per week. C had said that she was tired due to her pregnancy.

Under cross-examination, J accepted that C had not made a claim about the knife-throwing incident although she could have done so. J did not know why C was saying that he had said that she could work three days or no days. Asked if reduction was a problem, J replied: “No. I encouraged her to go to college. That was a reduction.”

It was put to J that there had been no difficulty until C said she was pregnant. J replied: “Pregnancy was not an issue for me.” Asked if C had ever been late, he said that he could not recall.

Giving evidence, D said that he had been the general manager of R's hotel at the time that C had worked there. He and C had had good day-to-day dealings relating to the hotel kitchen.

D was involved in the butter-knife incident in that he found it appropriate that T (the thrower) was dismissed as a result. C was approached "to make sure that she was ok". She was not cut or injured in any way. That "would have been it".

D had had no complaints about C's employment when, in August 2005 he thought, J told him about C's pregnancy. C would not have to do heavy lifting. No other special treatment was given. There were two porters on each shift. Also, there were other males in the kitchen.

D told the Tribunal that the reduction in C's working week did not cause problems for R. D had no problem with how J ran the kitchen provided that it stayed within budget. J had always brought on his staff in terms of their getting qualifications. It would be the norm to pay chefs when they were training.

Regarding 27 October 2005, J told D what had happened. D got a call from C who said that she had been sacked. There was no suggestion that D would ring C "to get her back". D did not like to lose staff. He arranged to meet C. He asked C to meet him that afternoon of 27 October. C "did not show up". The next day, D asked why C had not been there. They made an arrangement for the following Tuesday. Again C "did not show". C had committed to coming in. D was "surprised that she did not show".

D told the Tribunal: "It takes time to retrain and re-employ somebody. Absence puts pressure on other staff." D added that R had a grievance procedure. Asked if any suggestion had been made that C avail of the grievance procedure, D replied that "the term would not have been used" but added that C had said that J had sacked her.

Subsequently, R received a solicitor's letter seeking C's P45. R sent it on.

Under cross-examination, D was asked if it was not a problem if an employee wanted reduced hours. D replied: "It's a difficulty we have to overcome."

It was put to D that C had always been punctual and why would she become a liar. D replied: "I don't know."

D told the Tribunal that R had had a full-time to part-time staff ratio of 60/40 and that it was normal to have part-time staff in the kitchen.

Determination:

Having carefully considered the conflicting evidence adduced, the Tribunal finds that the claimant was dismissed but was not satisfied that the dismissal was related to the fact that the claimant was pregnant. As the claimant did not have twelve months' service with the respondent when her employment ended the claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

Given the fact that the Tribunal finds that there was a dismissal (and that there is no finding of gross misconduct by the claimant) it follows that the claimant has an entitlement to a minimum notice payment. Under the Minimum Notice and Terms of Employment Acts, 1973 to

2001, the Tribunal awards the claimant the sum of €254.36 (this amount being equivalent to the claimant's gross weekly wage from when she agreed with the respondent that she would work a three-day week due to her pregnancy plus one day's attendance at a training course at the respondent's expense).

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)