

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD1336/2005
WT459/2005

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr. J. Browne
Mr. G. Lamon

heard this claim at Wexford on 28th May 2007

Representation:

Claimant(s) : Ms. Mary Foley B.L. instructed by McMahon O'Brien Downes, Solicitors,
Mount Kennett House, Henry Street, Limerick

Respondent(s) : Ms. Catherine O'Connor, Solicitor, MJ O'Connor, Solicitors,
Drinagh, Wexford,
XXXX

The determination of the Tribunal was as follows:-

Respondent's Case:

The manager of the respondent company gave evidence. He told the Tribunal that he was responsible for twelve members of staff including the claimant. The majority had been employed for almost ten years and there was seldom a change in staff. The claimant had worked as a barman since September 1996. He was a good worker and the manager acknowledged there was a friendly attitude amongst the staff. The claimant had been offered the position of assistant manager but had declined. During 2003 and into 2004 the claimant had experienced personal difficulties and he became unreliable by not reporting for work when rostered. There was an occasion when the claimant walked out while on duty and the manager approached him and had a conversation about his behaviour. The manager and the area manager had a formal meeting with the claimant on the 4th April 2005 where they discussed the claimant's recent behaviour of not turning up for work. He was given a warning and told he would be dismissed if the behaviour persisted.

The behaviour persisted and on the 7th or 8th May, the claimant again did not turn up for work. The

manager told him that he had no alternative but to report him to head office. On the 9th May the manager telephoned the claimant and asked him to discuss any problems he was having. The claimant declined. When the claimant reported for duty, the manager called him into the office and explained that the behaviour could not continue. He gave the claimant one month's notice. The claimant understood and accepted the notice. The claimant was remunerated for the complete month of his notice but failed to attend for work.

Under cross-examination, the manager told the Tribunal that the claimant had a friendly and easygoing manner at work. The manager had not furnished the claimant with a contract of employment. There was a relaxed atmosphere in the workplace and there was little need for disciplinary matters. The manager was aware of the nature of the claimant's personal difficulties. He did not keep any records of discussions he had with the claimant as any difficulties were discussed in a friendly manner. When the claimant did not turn up for work, the other staff members would have to work extra hours without notice.

The assistant manager gave evidence. He enjoyed working with the claimant until the claimant experienced personal difficulties. He became unreliable and his personality changed. He was not pulling his weight in the company. On the weekend of the 7th and 8th May 2005, the claimant commenced his shift. He took his break and did not return. He did not telephone the witness and did not accept any phone calls. The claimant came to the bar and became abusive so the witness asked him to leave. He left it to the manager to discipline the claimant, but expected that the claimant would resolve his personal difficulties in time.

Under cross-examination, the assistant manager said that most of the staff were employed through word of mouth and it was a family run business. At the time of his difficulties, he tried to be more of a friend to the claimant than a manager. He covered for the claimant on several occasions and he had no input into the decision to dismiss the claimant. When the claimant's difficulties arose, he was encouraged to take time off. The claimant returned to work after one week's leave and said he had sorted everything out. This was clearly not the case and his behaviour escalated. No employee had been suspended or dismissed in the nine years the assistant manager had been working for the respondent.

The area manager gave evidence. He said that he was responsible for three pubs in total. He was not involved in the day to day running of them. He would cover for leave on occasion but it was only for a few hours here and there. The manager advised him that he was having difficulties with the claimant and they met for an informal conversation. The claimant promised that there would be an improvement in his behaviour. There was a second meeting on the 4th April 2005 regarding the same issues. Again, the claimant promised improvement. He told the claimant that if matters did not improve, he would be forced to take further action. He was not present at the meeting where the claimant was dismissed. Under cross-examination, the area manager said that he had felt that the claimant would be able to sort out his difficulties over time but this never happened and instead, his behaviour escalated.

Claimant's Case:

The claimant gave evidence. He worked for the respondent as a barman. When he was offered the position of manager, he refused it as he was happy the way he was. He did not have a contract of employment. He experienced personal difficulties in 2003 but continued performing his job well. In April 2005 the area manager had a meeting with him about his performance. This was the first time his performance had been addressed. On the weekend of the 7th and 8th May 2005 he failed to

attend work. On the Monday, he was called into work by the manager. He knew himself that he had been out of order. The manager told him that he was being dismissed and the claimant did not argue the point. He always did his job to the best of his ability and was surprised he was dismissed. He did not work out his notice in total as he was unable to stay when all the customers knew he was going. He established loss for the Tribunal.

Under cross-examination, the claimant told the Tribunal that the customers knew he was going to be dismissed before he did himself. He thought he was going to be reprimanded in some way but not dismissed. He had been warned about his behaviour in the past but that was as far as it had gone. He admitted that his behaviour had been unacceptable.

Determination:

The Tribunal, having considered the evidence, is of the unanimous view, that while the procedures in relation to warnings were of a somewhat informal nature the view of the Tribunal is that the respondent endeavoured to assist the claimant. Because of the particular difficulty that the claimant had in relation to his own health, they could no longer continue to have him in their employment as a responsible server of alcohol. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

As no evidence was adduced under the Organisation of Working Time Act, 1997, the claim is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)