

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:	CASE NO.
Employee	UD974/2006
Employee	UD987/2006 WT313/2006
against	
Employer	
under	

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B.L.

Members: Mr. F. Cunneen
Mr. P. Woods

heard these claims at Mullingar on 1 November 2007

Representation:

Claimants:
Both in person

Respondent:
Mr. Barney Fitzgerald, Congress Centres Network,
Harbour Court, Friars Mill Road, Mullingar, Co. Westmeath

The determination of the Tribunal was as follows:

The fact of dismissal was in dispute in these cases and it was therefore for the claimants to show that they had been dismissed.

The respondent began to operate a public house in June 2005. The public house served hot food until around 7-00 pm. The first named claimant (FC) was employed as a cook from 25 July 2005. The second named claimant (SC) was employed as a kitchen porter from 9 August 2005. The claimants had neither written contracts or terms and conditions of employment. The employment was uneventful until the evening of Tuesday 8 August 2006 when FC went to the public house at around 10-00 pm with her two daughters, DE who was also an employee of the respondent and DN

who was not an employee of the respondent. Some thirty minutes later they were joined by SC. Shortly after SC arrived another employee (AE), who also worked in the kitchen, came in to the public house and sat at the opposite end of the bar. FC went across to speak to AE about the work roster for the kitchen. The two of them were having a normal conversation when DN came and sat with them and began to berate AE about a rumour AE was allegedly spreading about DE. This caused an argument to break out and as a result of this the two remaining customers not involved with these matters left the premises. The bar manager (BM), who is the respondent's son, asked DN, AE and FC to quieten down but this was to no avail. BM then ordered DN, AE, FC, SC and DE to leave the premises. He allowed AE to remain on the premises until the other four had left. SC and DE left the premises without further problem but as FC and DN were leaving BM attempted to guide FC through the doorway. This caused FC to become angry and DN to become enraged. At this time BM told DN that she was barred from the premises.

The respondent's position is that, as FC was being thrown out, she told BM that "we're all leaving and you can tell your mother that she can keep her job". The claimants' position is that FC did not make the second part of the alleged remark; it is further their position that BM shouted at them "get out all of you and don't come back". It is common case that there was no contact between FC and the respondent who was due back at work on Thursday 10 August 2006. The claimant later contacted the respondent for her outstanding monies and P45. Whilst SC was contacted by the respondent and BM about returning to work she declined to do so saying that she felt unable to return to work following the events of 8 August 2006 and subsequent disparaging text messages she had received from AE. The respondent took no action against AE as a result of this incident. BM's position was that DN intimidated AE. The public house closed on 6 October 2006.

It is accepted that SC took no annual leave during her employment. SC's position is further that she worked seven of the nine public holidays that fell during her employment and received no compensation for them. The respondent, whilst disputing this, had no records to put before the Tribunal.

Determination:

It is quite clear that a serious argument broke out between AE and DN, and then FC, on 8 August 2006 and that it had the potential to affect the future of the employment of those involved who were employees of the respondent. AE felt the need to clarify her future with the respondent; the respondent approached SC and asked her to stay. No such contact was made with FC. The Tribunal is not satisfied that, as she left the premises, FC made the remarks attributed to her by BM about her job. For all these reasons the Tribunal is satisfied that FC was dismissed on 8 August 2006. The Tribunal is further satisfied that this was a dismissal without any, or fair, procedures. It must follow that the dismissal was unfair. The Tribunal awards FC €1,350 under the Unfair Dismissals Acts, 1977 to 2001. The Tribunal notes that a claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2003 is still extant.

Having already noted that SC was asked to stay by the respondent after the incident of 8 August 2006, the Tribunal is satisfied that SC was, in reality, a bystander to the incident. The Tribunal finds that SC was not dismissed on 8 August 2006; rather, by her refusal to return to work when asked to come back by the respondent, she resigned. Accordingly her claim under the Unfair Dismissals Acts, 1977 to 2001 must fail. The Tribunal awards SC €1,728-00, being four weeks' annual leave and seven public holidays, under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)