

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD866/2006

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Fahy B.L.

Members: Mr. J. Redmond
Ms. H. Henry

heard this claim at Galway on 27 November 2007

Representation:

Claimant:

Mr. Liam Sheridan, Liam J. Sheridan & Co. Solicitors,
Unit 9, The D-Mek Centre, Teeling Street, Ballina, Co. Mayo

Respondent:

Ms. Dawn Carney, Lewis C. Doyle & Co Solicitors,
Augustine Court, St. Augustine Street, Galway

The determination of the Tribunal was as follows:

There was a preliminary point in this case. It is common case that the claimant was summarily dismissed on 24 January 2006. The respondent's position was that the claimant was employed from 28 January 2005; the claimant's position was that he was employed from 21 January 2005. It was submitted on behalf of the respondent that, as the claimant did not have one year's continuous service then, by virtue of section 2 (1)(a) of the Unfair Dismissals Acts, 1977 to 2001, there was no jurisdiction for the claim to be heard. The hearing proceeded on the basis that, if the dismissal were found to be unfair, the claimant having been dismissed without notice, the date of dismissal would become 31 January 2006 taking into account his period of statutory notice. In the event, when the claimant's contract of employment was opened to the Tribunal, it became clear that his employment commenced on 24 January 2005. That being the case the Tribunal was satisfied that the claimant did have one year's continuous service and accordingly there was jurisdiction to hear the claim.

The claimant was employed as a part-time member of the respondent's security team. The respondent operates a public house. He was in receipt of a contract of employment and terms and conditions including disciplinary and grievance procedures. The employment was uneventful until the night of Sunday 22 January 2006 when, at around 11-30pm the claimant had a problem with a potential patron (PP) of the respondent. PP was refused entry to the public house by the claimant and his colleague (HC) who were controlling the door to the facility. The claimant felt that PP was intoxicated. When refused entry PP became a problem at the door and remained there for some twenty minutes berating the claimant and HC and making life awkward for patrons of the facility. At the end of this period the claimant put PP in an arm lock and moved him away from the door area.

At 2-10am on Monday 23 January 2006 three Gardai arrived with PP and requested of the assistant bar manager (BM) to see CCTV footage of the earlier incident involving the claimant and PP as there was now an allegation of assault by PP against the claimant. It is common case that the Gardai were shown footage of the front door of the facility with PP in an arm lock. A subsequent charge of assault against the claimant was later struck out at the District Court. The respondent's position is that there is no CCTV coverage of the area at the side of the facility where the claimant took PP after putting him in the arm lock. Their position is further that after the Gardai left the claimant told BM that he had taken PP around the side of the facility to scare him. The claimant's position is that there was CCTV coverage in this area but BM did not have the code to access it. No CCTV footage was made available to the Tribunal.

Some time on Monday 23 January 2006 PP's mother contacted the respondent to complain that the claimant had assaulted PP. The claimant worked normally on 23 January 2006. On Tuesday 24 January 2006 the claimant was called to a meeting with the general manager (GM) of the respondent at 7-30pm before his shift began at 8-00pm. The respondent's position is that the claimant was told that the meeting was to discuss the incident from 22 January 2006 and that he was offered the opportunity to be accompanied at this meeting. The claimant's position is that the 7-30pm meeting with GM was a scheduled feedback meeting; he was given no warning of what the meeting was about and was not offered the opportunity to be accompanied.

The respondent's position in regard to this meeting is that the claimant broke down and admitted that he had assaulted PP. The claimant's position is that he had neither assaulted nor had he admitted to having assaulted PP on 22 January 2006, rather he had used reasonable force or restraint to move PP away from the entrance to the facility. The claimant was not shown any CCTV footage at this meeting. At the conclusion of the meeting the claimant was instantly dismissed without notice as GM felt the claimant's behaviour amounted to gross misconduct in accordance with the respondent's disciplinary procedure.

Determination:

Having heard all the evidence in this case the Tribunal prefers the evidence of the claimant. The Tribunal is satisfied that there is no evidence that the claimant was guilty of gross misconduct. It follows that the dismissal was unfair. The Tribunal awards €4,500-00 under the Unfair Dismissals Acts, 1977 to 2001

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)