

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD1004/2006

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Mr T. Gill
Mr. T. Kennelly

heard this claim at Limerick on 24th January 2008

Representation:

Claimant(s): Mr John Hickie, Solicitor, 10 The Crescent, Limerick

Respondent(s): Dundon Callanan, Solicitors, 17 The Crescent, Limerick

The determination of the Tribunal was as follows:-

This matter came on for hearing before this Division of the Tribunal on Thursday the 24th of January 2008.

Claimant's case.

Evidence was heard from the claimant, who told the Tribunal that he was a fulltime employee of the respondents since 2004. He is forty-six years of age and is an experienced barman. He was working forty-two hours a week for the respondents. He gave evidence of his relationship with one particular customer of the establishment. The claimant felt that this customer had a grudge against him. He described a series of incidents in which this customer had assaulted him or physically interfered with him.

On the first occasion, the claimant complained that the customer came up behind him and caught him by the throat. He contended that both respondents were present at the time and both owners

were aware that the incident had occurred.

He believed that the second event occurred possibly on the night of a Limerick hurling match. Similarly, the customer caught him by the throat.

On a third occasion, which was a Sunday in September, the claimant gave evidence that the customer tried to hit him and in doing so clipped another young barman.

On the 18th of September 2006, the claimant came on duty and was due to work part of that evening with the wife of one of the owners. He said to her that he was not serving that particular customer anymore. He alleges that she responded by saying that he had to serve the customer. He said that 'he wasn't taking a chance on him'. When she indicated that they expected him to serve the customer the claimant left the premises saying that he wasn't coming back anymore. He subsequently handed in a medical certificate and on the following Wednesday called to collect his P45. He appeared to indicate to the respondents at that stage that he had now got a different job driving. It subsequently emerged that this job didn't materialise but some weeks later he commenced work with another company on a fulltime basis.

Evidence was heard from a second witness, who described a confrontation that he himself had with the customer in question. These events, though reflecting unfavourably on the customer, have very little bearing on the case in hand.

Respondents' case.

On behalf of the respondents, evidence was given by one of the partners. He described having a good relationship with the claimant and no difficulty with him. He described the relationship between the claimant and the customer as being one of a bantering nature. Both parties gave as good as they got verbally and the customer was essentially harmless. He admitted that he was there on one occasion when he saw the customer put his hand on the claimant's shoulder when the claimant was having a drink off duty. When he discovered that the claimant had left the job he tried to telephone him but got no response. He felt that no stronger action needed to be taken in relation to the incident that he saw, which he regarded as being of a very minor nature.

Evidence was also heard from the wife of the first witness. She also witnessed the bantering relationship between the parties. She remembers encouraging the claimant to stay away from the customer and not to permit him to irritate him. She was not there when the claimant left the premises but met him the following night and encouraged him to speak to the first witness. He said he would not. He came in for his P45 the next day and said that he had gotten a job driving a truck.

Evidence was also given on behalf of the respondents by the wife of the second partner, who described the events of the final night of the claimant's employment. She remembers the claimant saying to her "if you're serving him I'm not staying" and "if he is in the bar I'm going". She told him to go out and talk to her husband, who is the co-owner of the premises. He didn't come back.

Evidence was heard from the second partner, and co-owner, who was asked whether or not he had come to the claimant's assistance on three occasions as had been alleged to by the claimant. He responded that he had never once had to come to his assistance. He said that had there been a real problem between the claimant and the customer "that they would have stood by" the claimant.

Determination.

The thrust of the evidence in this case is that the claimant was irritated by the antics of a regular customer. The respondents' view was that the customer's conduct was not threatening or abusive and was more bantering in nature and that the claimant was unduly irritated by it.

The allegation that the claimant actually suffered physical assaults by being grabbed by the throat (as he described) is difficult to accept. The claimant insisted that both partners were present when these incidents occurred but, on balance, this Division of the Tribunal accepts the evidence of the respondents in that they witnessed no significant assault by the customer on the claimant.

On the night that the claimant left his employment for the last time, he notified his intention to depart to the wife of one of the partners, who was not a person of any authority. There was nothing she could have done in relation to the matter on the night in question. Furthermore, it seems that the claimant made no reasonable attempt to contact his employer, who seemed to have quite a good deal of respect for him, in the days following his departure.

In all the circumstances, the Tribunal finds that the claimant has not adequately made out a case for constructive dismissal. The Tribunal finds that the claimant did not take adequate steps to communicate with his employers for the purposes of resolving the issues and there is very little the respondents could have done in preventing the claimant leaving his employment.

In all the circumstances, this Division of the Tribunal disallows this application.

The claim under the Unfair Dismissals Acts 1977-2001 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

